

Exhibit E

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<p>IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF TEXAS HOUSTON DIVISION</p> <p>VIRGINIA ELIZONDO, § Plaintiff, § § v. § Civil Action No. § 4:21-CV-01997 § SPRING BRANCH INDEPENDENT § SCHOOL DISTRICT, ET AL., § Defendants. §</p> <p>*****</p> <p>ORAL DEPOSITION OF JOHN R. ALFORD, PH.D. MARCH 24, 2022</p> <p>*****</p> <p>ORAL DEPOSITION OF JOHN R. ALFORD, PH.D., produced as a witness at the instance of the Plaintiff, and duly sworn, was taken in the above-styled and numbered cause on the 24th day of March, 2022, from 10:27 a.m. to 2:16 p.m., before John G. Rochelle, CSR in and for the State of Texas, reported by machine shorthand, at the SBISD Athletic Complex, 1050 Dairy Ashford Street, Houston, Texas, pursuant to the Federal Rules of Civil Procedure and the provisions stated on the record or attached hereto.</p>	<p>1 INDEX PAGE</p> <p>2</p> <p>3 Appearances..... 2</p> <p>4 JOHN R. ALFORD, PH.D.</p> <p>5 Examination by Mr. Golando..... 5</p> <p>6 Signature and Changes..... 170-171</p> <p>7 Reporter's Certificate..... 172</p> <p>8</p> <p>9 EXHIBITS</p> <p>10 NO. DESCRIPTION PAGE</p> <p>11 Exhibit 1..... 13</p> <p>12 Notice of Oral Deposition for John R. Alford, Ph.D.</p> <p>13 Exhibit 2..... 64</p> <p>14 Expert Report of John R. Alford, Ph.D. dated</p> <p>15 February 21, 2022</p> <p>16 Exhibit 3..... 69</p> <p>17 Expert Report of Robert M. Stein, Ph.D. dated</p> <p>18 January 20, 2022</p> <p>19 Exhibit 4..... 119</p> <p>20 Article entitled "Political Attitudes Vary with</p> <p>21 Detection of Androstenone"</p> <p>22 Exhibit 5..... 88</p> <p>23 Article entitled "At-Large Elections and</p> <p>24 Minority Representation in Local Government"</p> <p>25 Exhibit 6..... 163</p> <p>Document entitled "Letter of Agreement for</p> <p>Services of Consulting and Testifying Expert"</p>
<p>Page 2</p> <p>1 APPEARANCES</p> <p>2</p> <p>3 FOR THE PLAINTIFF:</p> <p>4 Mr. Barry Abrams</p> <p>5 Blank Rome LLP</p> <p>6 717 Texas Avenue, Suite 1400</p> <p>7 Houston, Texas 77002</p> <p>8 Phone: (713) 228-6606</p> <p>9 Email: babrams@blankrome.com</p> <p>10</p> <p>11 AND</p> <p>12</p> <p>13 Mr. Martin Golando</p> <p>14 The Law Office of Martin Golando, PLLC</p> <p>15 2326 W. Magnolia</p> <p>16 San Antonio, Texas 78201</p> <p>17 Phone: (210) 471-1185</p> <p>18 Email: martin.golando@gmail.com</p> <p>19</p> <p>20 FOR THE DEFENDANTS:</p> <p>21 Mr. Charles J. Crawford</p> <p>22 Abernathy, Roeder, Boyd & Hullett, P.C.</p> <p>23 1700 N. Redbud Boulevard, Suite 300</p> <p>24 McKinney, Texas 75069</p> <p>25 Phone: (214) 544-4000</p> <p>Email: ccrawford@abernathy-law.com</p> <p>ALSO PRESENT:</p> <p>Ms. Audrey Shakra</p>	<p>Page 4</p> <p>1 Exhibit 7..... 165</p> <p>2 Article entitled "Republican Party of Texas</p> <p>3 Doubles Down on Local Election"</p> <p>4</p> <p>5 Exhibit 8..... 166</p> <p>6 Article entitled "Do District-Based Elections</p> <p>7 for School Board Help Minority Candidates Get</p> <p>8 Elected?"</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>

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1 (Exhibit Nos. 1 through 8 premarked.)
 2 JOHN R. ALFORD, PH.D.,
 3 having been first duly sworn, testified as follows:
 4 EXAMINATION
 5 BY MR. GOLANDO:
 6 **Q. Good morning, Dr. Alford.**
 7 A. Good morning.
 8 **Q. My name is Martin Golando. We've met before.**
 9 **I represent Virginia Elizondo in this case. And you've**
 10 **read the pleadings, and you've read the expert reports;**
 11 **is that correct?**
 12 A. That's correct.
 13 **Q. And you've had your deposition taken -- I don't**
 14 **know -- 140 times, something like that?**
 15 A. I don't know if it's that many times, but it
 16 seems like that many times.
 17 **Q. So you're well-acquainted with the process. I**
 18 **don't think I've ever deposed you before, but --**
 19 A. I don't think so.
 20 **Q. -- I am a little inarticulate. I talk a little**
 21 **mushmouthy. And so if you don't understand what I'm**
 22 **asking you to do, or asking you to say, it's my fault.**
 23 **So just ask me to repeat it, or I'll have him repeat it**
 24 **to you. It's just I want to make sure that we're very**
 25 **clear on the record the questions and answers. Right?**

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1 **The second instruction, I think, is the -- I need you to**
 2 **wait till I finish asking the question, and then you can**
 3 **answer. And I will try not to interrupt you. If you**
 4 **would try not to interrupt me, I'd be appreciative. And**
 5 **if you don't understand anything I'm saying or if you**
 6 **don't understand the question, again, just let me know,**
 7 **and we'll try to work it through. I promise.**
 8 **So would you mind telling me what is your**
 9 **full name for the record, please?**
 10 A. It's John Richard Alford.
 11 **Q. And where do you live, sir?**
 12 A. I live in Houston, Texas.
 13 **Q. Okay. And did you go to high school here? I**
 14 **think you did. Right?**
 15 A. I went to -- it's a good, good question. I
 16 went to -- I went to Clear Creek High School, which is
 17 of course in Galveston County. And we lived on the --
 18 what would not be in Houston, but at the time had not
 19 yet been annexed so --
 20 **Q. Interesting. Fair enough. And so where did**
 21 **you go to school first for college?**
 22 A. University of Houston.
 23 **Q. And when were you there roughly?**
 24 A. Late '70s.
 25 **Q. Okay. Did you ever do any drama there?**

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1 A. No.
 2 **Q. Because they had a great drama teacher. I**
 3 **don't know if you knew that or not.**
 4 A. Oh, yeah. Like world-renowned, really amazing.
 5 And a very -- the University of Houston is a place I'm
 6 very proud of.
 7 **Q. I would be, too. So if you watch any of the**
 8 **Lakers series, the guy who's playing Bill Sharman --**
 9 A. Yeah.
 10 **Q. -- actually went to the University of Houston**
 11 **at roughly the time you were there.**
 12 A. Yeah.
 13 **Q. I didn't know if you --**
 14 A. Yeah.
 15 **Q. -- if you knew him or not.**
 16 A. Yeah. They had a pretty good basketball team
 17 back then, too.
 18 **Q. They did. Is that Calvin Hayes or --**
 19 A. Yeah. Yeah.
 20 **Q. Yeah. Fair enough.**
 21 A. Yeah. When I was in high school was sort of
 22 their -- it was their real peak for U of H basketball.
 23 I guess I was in middle school when -- I think when
 24 they -- when they beat UCLA, which was just spectacular.
 25 **Q. And it was 1973?**

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1 A. Yeah. Yeah. So it would have been -- no.
 2 Yeah, I guess I would have been there. Pretty -- you
 3 know, I spent a lot of time talking to people from
 4 the -- sort of that era and the era just before I was
 5 there. It was just a really interesting time. And Gene
 6 Locke has some fascinating stories about his time at U
 7 of H. It was just a -- you know, it was a very short
 8 time before I was there, but a different world than it
 9 was by the time -- by the '70s. The '60s at U of H was
 10 quite different. So it's interesting.
 11 **Q. That's interesting. And after that you went**
 12 **and got an MPA; is that correct?**
 13 A. I got a -- yes. I got a bachelor's and a
 14 master's of public administration.
 15 **Q. And then you went to Iowa, correct?**
 16 A. Iowa. Correct.
 17 **Q. And when were you in Iowa?**
 18 A. So Iowa would have been from, say, '79 to '84.
 19 Something like that.
 20 **Q. And what did you study at Iowa? What was your**
 21 **major course of study?**
 22 A. So American politics, methodology, and public
 23 policy.
 24 **Q. And did you study Bernie Grofman then and his**
 25 **ecological regression at the time, or what did you --**

2 (Pages 5 to 8)

<p style="text-align: right;">Page 9</p> <p>1 what was your first introduction to regression?</p> <p>2 A. That probably would have been the first time I</p> <p>3 was familiar with that. And then when I -- I continued</p> <p>4 to work with some people at U of H, and so I -- and</p> <p>5 Bernie back and forth for a time period because mother</p> <p>6 lived in Houston for a while. So I met him. And we</p> <p>7 didn't ever actually work on any research projects</p> <p>8 together; but, you know, he's a -- he's an amazing</p> <p>9 fella.</p> <p>10 Q. He is. He's extraordinarily impressive. So</p> <p>11 you were at Iowa, got your Ph.D., and you came back to</p> <p>12 Houston? Or what was your first job out of Iowa?</p> <p>13 A. No. I got a job at Oakland University.</p> <p>14 Q. In Michigan?</p> <p>15 A. Yes.</p> <p>16 Q. Okay.</p> <p>17 A. I wasn't aware of the fact it was in Michigan.</p> <p>18 When I accepted the interview I thought it was in</p> <p>19 Oakland. Foolish me. You know, pretty much -- I was</p> <p>20 born in Japan, but I pretty much grew up in Houston.</p> <p>21 And so Iowa was a very cold experience for me.</p> <p>22 Q. I bet.</p> <p>23 A. I was excited about getting somewhere else, and</p> <p>24 I wasn't really thinking about going kind of further</p> <p>25 north. And so I went to -- I went to Oakland. I was</p>	<p style="text-align: right;">Page 11</p> <p>1 construction company in Iran. Then we spent a year in</p> <p>2 Vienna, then a couple years in Washington, D.C., where</p> <p>3 he was doing consulting, and then Corpus Christi and</p> <p>4 some other places before he -- he finally settled down,</p> <p>5 went to work for NASA when they were just building</p> <p>6 the -- building that up. And that's where -- so that's</p> <p>7 where I settled in and went to middle school and high</p> <p>8 school. But a lot of moving around before that.</p> <p>9 Q. Me too. Not quite to Iran, but -- I'm going to</p> <p>10 hand you the --</p> <p>11 A. Yeah. You pretty much trump anybody with Iran</p> <p>12 because nobody lived there.</p> <p>13 Q. So you were in Iran during -- when there was a</p> <p>14 shah, right?</p> <p>15 A. We actually met the shah.</p> <p>16 Q. What was that like?</p> <p>17 A. Unimaginably weird, like -- like waking up in</p> <p>18 some kind of a weird '50s Disney movie or something</p> <p>19 because they -- this was to celebrate the opening of --</p> <p>20 the completion of this dam project, and they completely</p> <p>21 remade the town. I mean, they just -- like they changed</p> <p>22 the -- you know, artificially sort of with paper and</p> <p>23 stuff changed the outside of the building. So they had</p> <p>24 all these gold banners everywhere. Everybody put on</p> <p>25 these fancy clothes. And just like a weird retinue of</p>
<p style="text-align: right;">Page 10</p> <p>1 there for a year. And then I got recruited by</p> <p>2 University of Georgia. So I was at University of</p> <p>3 Georgia for a couple of years. And then the professor</p> <p>4 who had been my mentor at U of H in the meantime had</p> <p>5 jumped to Rice, and he recruited me to come back to</p> <p>6 Houston.</p> <p>7 Q. Must have been nice to come home, I guess?</p> <p>8 A. Yeah.</p> <p>9 Q. So you said you were born in Japan? Is that</p> <p>10 correct?</p> <p>11 A. Yes.</p> <p>12 Q. Was your dad in the military, mom in the</p> <p>13 military?</p> <p>14 A. My dad is a -- yeah, an Army officer, and</p> <p>15 so we -- it was during the Korean war. He was stationed</p> <p>16 in -- he had been in the Pacific in World War II but</p> <p>17 then came back in the Korean war and was in a -- running</p> <p>18 a supply area in southern Japan. That's where I was</p> <p>19 born.</p> <p>20 Q. I didn't know that. I guess you bounced around</p> <p>21 a bit, huh, after that or --</p> <p>22 A. Iran, Vienna, lots of different places in the</p> <p>23 United States. When he retired from the military out</p> <p>24 of -- we came back to Fort Bliss. He retired out of</p> <p>25 Fort Bliss and then immediately took a job with a</p>	<p style="text-align: right;">Page 12</p> <p>1 people coming through. And, you know, it was just -- it</p> <p>2 was very, very strange.</p> <p>3 Q. How old were you?</p> <p>4 A. It was -- let's see. Six.</p> <p>5 Q. Wow.</p> <p>6 A. So it was -- at the time it just seemed -- I</p> <p>7 mean, everything about Iran seemed fanciful. Most</p> <p>8 things about Vienna seemed fanciful, too, but -- but I</p> <p>9 actually haven't been back to Iran, but I've been back</p> <p>10 to where we lived in Vienna. It's one of those things</p> <p>11 where you -- when you're a kid you think, you know,</p> <p>12 everything is weird and strange and big. And I remember</p> <p>13 talking to my brother, and I said, "You know, do you</p> <p>14 remember like when we lived in Vienna? I remember we</p> <p>15 were living in this really huge, almost like a castle on</p> <p>16 a hill, and it had a turret, and there were like" --</p> <p>17 "the people lived in the turret, and we weren't allowed</p> <p>18 to go in there." And my brother said -- he was younger.</p> <p>19 My brother was a couple of years younger than me. He</p> <p>20 said, "You know, I've heard like our sister talking</p> <p>21 about that," but he said, "I'm not sure that is true."</p> <p>22 So I went back to Vienna, and it turned out it all was</p> <p>23 true.</p> <p>24 Q. That's wild.</p> <p>25 A. Yeah.</p>

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1 Q. So you're here pursuant to a notice of
2 deposition, correct?
3 A. Correct.
4 Q. Have you seen the notice, sir?
5 A. I have.
6 Q. I'm going to hand it to you. It's been
7 previously marked as Exhibit No. 1. Could you review it
8 for me and make sure it's authentic?
9 A. Yeah, that's what I remember seeing.
10 Q. So did you see the subpoena in the back for the
11 documents?
12 A. Yes.
13 Q. Okay. Did you have any documents for me?
14 A. I have -- I consulted with Mr. Crawford, and I
15 have documents that are related to my report.
16 Q. Okay.
17 A. And to my contract with the attorneys.
18 Q. Did you bring them with you today? Because I
19 have not seen them.
20 A. Oh. Sorry.
21 MR. CRAWFORD: John, are these your
22 originals?
23 THE WITNESS: They're --
24 MR. CRAWFORD: We can get copies made for
25 you.

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1 MR. GOLANDO: Please. That would be great.
2 A. So this is a -- this is just the email exchange
3 that was related to the contract. This is the contract.
4 And this is -- in the report I referenced a web page
5 related to single-member versus at-large. And then I
6 referenced a press release from the Republican Party.
7 So those are the -- other than the documents that I
8 consulted that were either Dr. Stein's report or his own
9 articles he cited, that sort of thing, these are the
10 things that both related to the contract and to
11 materials I relied on or referenced in the report.
12 Q. (BY MR. GOLANDO) This is the entirety of the
13 documents --
14 A. Yes.
15 Q. -- that you believe are responsive to the
16 subpoena, correct?
17 A. Yes.
18 Q. I'm going to give these to your counsel so he
19 can review them and then give me what he thinks is
20 responsive. And I'm going to have Barry review it
21 during the deposition. And I don't think we'll have any
22 questions about it, but if we do I want to make sure we
23 get it tacked on at the end, if you don't mind.
24 A. Yes.
25 Q. Have you worked for Spring Branch ISD in the

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1 past?
2 A. Yes.
3 Q. What was the nature of that engagement?
4 A. So I'm -- I'm not entirely sure about the
5 specific years, but sort of the timeline, my
6 recollection is that there was a lawsuit filed against
7 the district previously. And it could have been in
8 the -- perhaps in the '90s, maybe in the early 2000s,
9 but some -- some time ago. And I was hired by Robert
10 Heath, who was the attorney that was hired to defend the
11 school district. And I worked with him on that. And I
12 don't know if the -- I can't remember what the
13 resolution of that was. It didn't go to trial. I think
14 it was either dismissed or nonsuited. I'm not really
15 sure.
16 Q. Do you remember the nature of it? Was it a
17 voting rights lawsuit?
18 A. It was a -- it was a Section 2 voting rights
19 lawsuit, and the -- it turned out that it wasn't
20 possible to -- the only part that I had in it, my
21 recollection is, that it started with some -- a lot of
22 debate about whether Gingles 1 could be met, and that
23 ended up being what the suit was either dismissed or
24 nonsuited over, was the inability to actually draw a
25 majority-minority district.

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1 Q. Did you review Gingles 2 or 3 testimony?
2 A. I -- I just don't -- I don't remember whether
3 that -- whether we had started that or hadn't, but I --
4 I certainly didn't do anything in the sense of a report
5 on it or anything. I don't -- you know, Bob Heath may
6 still have that information. I don't even have the
7 records from that era anymore. But I don't -- I don't
8 recall doing -- again, I may have or may not. I know it
9 wasn't -- -- it never got to that stage in terms of --
10 either of my doing a formal report or a deposition.
11 Q. Do you recall coming to an opinion about
12 racially polarized voting in any sense in SBISD at that
13 time period?
14 A. No, I don't think -- I don't recall anything at
15 that time period, no.
16 Q. Is that the extent of your previous engagement
17 with SBISD? Did you do anything else for them in the
18 intervening years?
19 A. So in the intervening years when -- I'm not
20 sure exactly about the dates on this, but sometime more
21 recently I was retained to work with counsel for the
22 district on issues related to the districting scheme.
23 So they -- the district was considering alternatives to
24 the current at-large system, including single-member or
25 mixed plans. There was -- I think most of my discussion

4 (Pages 13 to 16)

<p style="text-align: right;">Page 17</p> <p>1 with them had to do with alternative elections, 2 particularly moving to something like cumulative 3 elections. So I've been involved in the shift in 4 Amarillo to cumulative elections. And so I think most 5 of what I provided to the attorneys was information 6 about kind of the nature of -- I think they had 7 demographers that were working. I wasn't doing -- so I 8 do both, you know, sort of redistricting lawsuits, and I 9 also do redistricting, so I do district drawing. I 10 didn't -- I wasn't involved in drawing districts for 11 them. They had some demographer doing that. I was 12 mainly involved in sort of providing information about 13 how cumulative elections would work and sort of what 14 were the -- what were kind of the critical break points. 15 One of the issues in cumulative elections 16 are -- it's these thresholds of exclusion. And they 17 vary depending on how many people are up. And so that 18 was one of the questions. It's -- you know, it's really 19 easy to meet the threshold of exclusion if you put all 20 seven board members up in the same election, but -- but, 21 you know, there are reasons why districts typically 22 don't put all their board members up at the same time. 23 So that was I think the main question that I was 24 addressing for them, was, you know, what -- what -- what 25 set of staggered terms involving how many members would</p>	<p style="text-align: right;">Page 19</p> <p>1 indicated at the time was that while they couldn't draw 2 a Gingles 1 district at that point, which I think may 3 have been around 2000, that it was clear that the 4 population trends, given the direction of population 5 trends, the day was going to come when they could 6 draw -- when they could draw a single -- when you could 7 draw a Gingles 1 district, and that in my experience any 8 district that could draw a Gingles 1 district should be 9 thinking seriously about what they intended to do about 10 it because it's -- it's not that hard to get -- it's not 11 that hard to win a Voting Rights Act Section 2 case if 12 you can't draw a single-member district. There's really 13 only one thing where you're not at the mercy of sort of 14 interpretation or the court's feelings, or whatever, and 15 that is the bright line, like -- I mean, even if they 16 just go under it by, you know, a tenth of a percentage 17 point, apparently like the one person, one vote standard 18 for congressional districts, that -- apparently the 19 court means, literally means one person, one vote. 20 Q. Yeah. 21 A. The bright-line test literally means the 22 bright-line test. And nothing after that, as I always 23 tell districts when I talk to them, nothing after that 24 is a bright line, nothing after that you can be assured, 25 you can say "okay, given this set of facts we're</p>
<p style="text-align: right;">Page 18</p> <p>1 meet the threshold of exclusion. 2 Q. Was that in 2020, or was that in 2019? 3 A. I think -- I could be wrong about this, but I 4 think there -- that this may have come up sort of in 5 that time frame, and then come up again more recently, 6 maybe -- coming up again maybe in 2017, 2018, somewhere 7 in that time frame. 8 Q. But in the last four years roughly? 9 A. Yes. 10 Q. Do you recall why they wanted to investigate an 11 alternative election system? By "they" I mean SBISD. 12 A. I don't -- I don't think I was given a lot of 13 direct information about sort of what the thinking was, 14 but my impression was -- or at least I approached it as 15 probably a combination of motivations maybe, different 16 motivations possibly by different -- either by different 17 board members or different people involved. But -- so 18 my sense is they were -- that they were both looking at 19 that as something the district might just want to do, 20 and also looking at it as something the district might 21 do in a -- in a sort of a prophylactic way; that is, to 22 avoid being -- to avoid being sued. 23 So at the -- in the very earliest instance 24 where it was clear that you couldn't draw a Gingles 1 25 district, I mean, one of the things that -- that I</p>	<p style="text-align: right;">Page 20</p> <p>1 definitely going to win this case or we're going to" -- 2 "you know, we could get this" -- "we could get the 3 summary judgment or something." Once you get into not 4 only the other thresholds but the totality of the 5 circumstance then you -- it's not only does that mean 6 that you're actually going to probably end up in a full 7 trial as opposed to getting summary judgment on Gingles 8 1. That's going to be expensive and it's -- and it's 9 going to be uncertain and it involves a lot of political 10 considerations that I think are important for a board to 11 be -- to be thinking about in advance. 12 It's not something you want to take 13 lightly. So that was sort of where things were left, or 14 initially was that this was -- that that point was going 15 to come, and when that point -- when they reached the 16 point where they were no longer sort of protected by the 17 fact that a district couldn't be drawn that they were -- 18 they needed to be thinking about what they wanted to do 19 at that point so -- 20 Q. Do you remember the names of the demographers 21 involved? 22 A. I do not. 23 Q. Do you recall if they did a racially polarized 24 voting analysis, if anybody did? 25 A. I -- I'm -- I wasn't sort of privy to all of</p>

<p style="text-align: right;">Page 21</p> <p>1 whatever their discussions were. I'm not sure I was 2 ever in -- either in direct contact with any of the 3 demographers or present when they were discussing things 4 with the lawyers, so I -- if they did, I wasn't aware of 5 it, but I don't know whether they did or not.</p> <p>6 Q. Did you do a racially polarized voting 7 analysis?</p> <p>8 A. At that point there was a -- I did just a very 9 preliminary, not -- sort of -- maybe not an actual 10 racially polarized voting analysis, but a quick look 11 at -- just looking at sort of where -- where candidate 12 votes were centered across the rough -- you can only do 13 it across the rough geography because there's so few 14 polling places. But just looking at where vote totals 15 were centered and how they varied across the geography, 16 but not a formal -- not like a EI formal analysis. At 17 that point it was just to look at the -- at sort of what 18 the election results looked like across the rough 19 geography.</p> <p>20 Q. What was your informal conclusion? Do you 21 recall?</p> <p>22 A. My informal conclusion was that that rough look 23 was certainly consistent with the possibility that -- 24 both that Hispanic voters were voting at above 50 25 percent for preferred candidates, including Hispanic</p>	<p style="text-align: right;">Page 23</p> <p>1 complete analysis of the sort that you typically will 2 see in a case like this.</p> <p>3 Q. Did you do ecological inference?</p> <p>4 A. Yes.</p> <p>5 Q. Gary King's?</p> <p>6 A. Well -- oh, God. It's -- it is essentially 7 Gary King's, but not Gary King's original, and 8 particularly not his iterative, which I for some reason 9 find myself fighting about all over the country. People 10 still insist on using King's iterative, which King only 11 just mentioned in passing, and then immediately, you 12 know, replaced with a -- so, yes, the -- what I 13 typically use is the variant of King's EI that's 14 sometimes called the Bayesian or I -- I think it more 15 appropriately is R x C approach. But it's essentially 16 King's EI.</p> <p>17 Q. I understand. And did you do the numbers 18 yourself?</p> <p>19 A. I think -- so there were two -- two pieces to 20 that. There was a standard, just an OLS, which I often 21 do just as a first estimate. It's not as -- it doesn't 22 do as good a job. It doesn't give you statistical 23 significance, but it usually gives you a pretty good 24 quick picture, which I did. And then the actual EI 25 would have been run by Randy Stevenson, who's a</p>
<p style="text-align: right;">Page 22</p> <p>1 candidates, and that Anglo voters are voting below 50 2 percent for those candidates, and those candidates 3 weren't being elected to the board.</p> <p>4 Q. Fair enough. And I think I -- in your answer I 5 heard you say you had not done one yet. Have you done a 6 racially polarized voting analysis?</p> <p>7 A. Since?</p> <p>8 Q. Since.</p> <p>9 A. Yes.</p> <p>10 Q. And not for this case, but for --</p> <p>11 A. Right. Not for this case, but -- but more 12 recently than the -- so there -- there are sort of three 13 distinct eras here, the old --</p> <p>14 Q. Sure.</p> <p>15 A. -- the dinosaur era, which was about meeting 16 Gingles 1 with Bob Heath, the more recent stuff three, 17 four years ago looking at -- particularly focusing on 18 potential things the district might want to think about. 19 That was, again, this rough kind of look. And in 20 addition a more direct focus on cumulative voting on 21 systems with some at-large, you know, some 22 single-member. And then more recently I was asked by -- 23 we're now at the -- at the second set of attorneys 24 rather than the third -- at the second set of attorneys 25 asked to provide the attorneys with, you know, a more</p>	<p style="text-align: right;">Page 24</p> <p>1 professor at Rice, who does a lot of programming and 2 statistical work with me.</p> <p>3 Q. And this was before the filing of this suit, 4 correct?</p> <p>5 A. I believe so, although I'm not -- I'm not 6 exactly certain when the suit was filed or exactly 7 when --</p> <p>8 Q. Yes, sir.</p> <p>9 A. -- when the work was done. But I -- yeah, I 10 would say -- I think it was before the suit was filed, 11 but it could have been -- no, no, no, because there was 12 discussion -- I think the district was aware that they 13 could be sued so -- what I'm not sure about is the -- I 14 had been asked to sort of take a look, so I had done 15 that very informal look. And I had been asked by the 16 lawyers to take a look at that, and at that stage I 17 think probably was when I ran the sort of regression 18 analysis. Whether that -- whether the actual EI 19 analysis was done before or shortly after the lawsuit 20 was filed I don't -- I don't know.</p> <p>21 Q. Do you recall the conclusions of that report?</p> <p>22 A. I did not provide a report.</p> <p>23 Q. Did you recall -- do you recall the findings 24 from your analysis?</p> <p>25 A. So the findings I shared with the attorneys</p>

<p style="text-align: right;">Page 25</p> <p>1 from that analysis.</p> <p>2 MR. CRAWFORD: And so based on that answer</p> <p>3 I'll ask you not to disclose what you told the attorneys</p> <p>4 based on the attorney-client privilege.</p> <p>5 Q. (BY MR. GOLANDO) Is Lisa Turner your attorney,</p> <p>6 · sir?</p> <p>7 A. Lisa --</p> <p>8 Q. I'm sorry. What was the previous attorney's</p> <p>9 name?</p> <p>10 MR. CRAWFORD: Lisa McBride.</p> <p>11 MR. GOLANDO: I'm sorry. I apologize.</p> <p>12 MR. CRAWFORD: No problem.</p> <p>13 Q. (BY MR. GOLANDO) Is Lisa McBride your</p> <p>14 attorney?</p> <p>15 A. My attorney? No, she doesn't represent me.</p> <p>16 Q. All right.</p> <p>17 A. But that's who I was working for when she</p> <p>18 represented the school board.</p> <p>19 Q. Yeah, I understand. And when she contacted you</p> <p>20 to do the EI analysis I heard you to say that it's</p> <p>21 possible it happened before the institute of this</p> <p>22 lawsuit. Correct?</p> <p>23 A. That's possible, yes.</p> <p>24 Q. Okay.</p> <p>25 MR. GOLANDO: I think we need to -- I need</p>	<p style="text-align: right;">Page 27</p> <p>1 court. And if we need to re-present Dr. Alford we will,</p> <p>2 but I'm not comfortable even under seal waiving the --</p> <p>3 waiving the objection.</p> <p>4 MR. GOLANDO: I understand. I think that's</p> <p>5 reasonable. Fair enough. So let's just move on.</p> <p>6 Q. (BY MR. GOLANDO) So the OLS that you did was</p> <p>7 definitely before the lawsuit, correct, the ordinary</p> <p>8 least squares?</p> <p>9 A. Could you remind me when the lawsuit was filed?</p> <p>10 That might be --</p> <p>11 MS. SHAKRA: June -- June --</p> <p>12 MR. GOLANDO: June of last year.</p> <p>13 MS. SHAKRA: 2021. Probably like June --</p> <p>14 MR. GOLANDO: The 30th?</p> <p>15 MS. SHAKRA: No. It was before the 26th.</p> <p>16 I want to say it was maybe like the 12th.</p> <p>17 MR. ABRAMS: I'll be able to tell you in a</p> <p>18 minute. Just give me a second.</p> <p>19 THE WITNESS: I feel better for not</p> <p>20 knowing. I felt kind of stupid, like I didn't know when</p> <p>21 the lawsuit was filed. So this is nice. I feel better.</p> <p>22 MS. SHAKRA: Okay. Let's see.</p> <p>23 MR. ABRAMS: The amended complaint was</p> <p>24 filed on June 22nd, so the original complaint would have</p> <p>25 been filed several days before.</p>
<p style="text-align: right;">Page 26</p> <p>1 to talk to Barry real quick, if you don't mind.</p> <p>2 MR. CRAWFORD: Okay.</p> <p>3 MR. GOLANDO: We're going to take a -- just</p> <p>4 a two-minute break.</p> <p>5 MR. CRAWFORD: Sure.</p> <p>6 MR. GOLANDO: Two or three-minute break.</p> <p>7 (Off the record from 10:54 a.m.</p> <p>8 to 10:55 a.m.)</p> <p>9 Q. (BY MR. GOLANDO) As I understand it, I asked</p> <p>10 you what the contents of that previous analysis was, and</p> <p>11 you -- Mr. Crawford objected on the basis of</p> <p>12 attorney-client privilege, is that correct, and you're</p> <p>13 currently refusing to answer that question? Correct?</p> <p>14 A. I'm deferring to whatever -- whatever Charles</p> <p>15 tells me to do that's what I'll do.</p> <p>16 Q. I don't think there's a basis to object to that</p> <p>17 because I need to know your previous analyses for</p> <p>18 credibility and weight. You've been hired on this</p> <p>19 position and --</p> <p>20 MR. GOLANDO: What I'd like to do instead</p> <p>21 is to see if we can put this answer under seal, and we</p> <p>22 can go fight about it with the --</p> <p>23 MR. CRAWFORD: No, I'm not willing to waive</p> <p>24 it. So what we can do is we can note it in the record,</p> <p>25 and then after the deposition we can take it up with the</p>	<p style="text-align: right;">Page 28</p> <p>1 Q. (BY MR. GOLANDO) So mid June.</p> <p>2 A. I was -- I thought it was in the fall, so</p> <p>3 that's earlier. So I don't -- I don't know. I mean, I</p> <p>4 could -- I could figure that out, but I just don't --</p> <p>5 that's -- I didn't realize the lawsuit was filed quite</p> <p>6 that early, so I don't -- I may have done that -- I</p> <p>7 think I probably did it sometime in the summer, but I</p> <p>8 think it might have been more like August rather than --</p> <p>9 than in -- sort of in the -- in May. I'm just not sure.</p> <p>10 Q. I understand.</p> <p>11 A. But I can find out.</p> <p>12 Q. If it was in May, then do you recall the</p> <p>13 outcome or what the ordinary least squares regression</p> <p>14 showed?</p> <p>15 MR. CRAWFORD: Again, I'm going to object</p> <p>16 to that based on the attorney-client and work product</p> <p>17 privileges and doctrine. And, Martin, just to your</p> <p>18 point, I believe that even if the lawsuit had not been</p> <p>19 filed at that time it was in -- at least in anticipation</p> <p>20 of litigation, and the privilege would also apply.</p> <p>21 MR. GOLANDO: Okay.</p> <p>22 MR. CRAWFORD: And the doctrine.</p> <p>23 MR. GOLANDO: We'll see about that.</p> <p>24 MR. CRAWFORD: Sure.</p> <p>25 Q. (BY MR. GOLANDO) I'm going to hand you Exhibit</p>

<p style="text-align: right;">Page 29</p> <p>1 I again, please. I want you to look at the last number 2 three of the subpoena. Do you see that, sir? 3 A. Yes. 4 Q. Okay. What does that say? Could you repeat it 5 for the court? 6 A. It says "All reports that the witness has 7 prepared for the Spring Branch Independent School 8 District or its counsel, on any subject for which he 9 has been compensated." 10 Q. Would you agree with me that those analyses 11 that you provided Ms. McBride would have been captured 12 by that -- that request? 13 A. I guess I didn't -- so two issues for me. One 14 is I wasn't certain about what of that would be -- sort 15 of normally would be disclosable or not, so I -- you 16 know, I checked with Charles. And, also, I never 17 provided a report to the district or the counsel. I 18 provided, you know, information and some tables, but 19 I -- I didn't -- it never reached the point of my 20 actually providing an expert report. So I guess I 21 wasn't -- I wasn't sure about exactly whether this 22 entailed sort of everything I ever told the lawyers. 23 And then I also wasn't sure about what of that was -- 24 what was protected and not, so I'm relying on the 25 attorneys --</p>	<p style="text-align: right;">Page 31</p> <p>1 A. Not inconsistent. I guess -- so, I mean, I -- 2 you know, I think -- my recollection is that I wasn't 3 satisfied that I sort of understood fully what was going 4 on on the basis of that analysis. So one of the things 5 that can be problematic with -- well, in lots of things 6 that can be problematic with OLS -- but it just was 7 not -- it -- it had, you know, sort of large confidence 8 intervals, and my recollection is there were some things 9 internally that didn't look like they -- they were 10 consistent across some of the elections, whatever, 11 that -- that led me to think that -- I mean, one of the 12 things that obviously is important here, as true with 13 any case where you're dealing with Hispanic voters, is 14 turnout is really critical to understanding what you're 15 actually seeing. And turnout doesn't get captured in 16 the OLS, and so it's -- well, normally -- when I say 17 "normally," so in a case where you have either the 18 surnames of the voters, or a case involving black voters 19 where black VAP is solid as a rock, it really doesn't 20 make -- you can do the analysis either way. It's going 21 to be about the same. 22 The advantage for -- for using -- in my 23 view for using R x C EI with -- if the case is a 24 Hispanic case and if you're relying on something other 25 than the vote codes -- so a lot of time you're relying</p>
<p style="text-align: right;">Page 30</p> <p>1 Q. I understand. 2 A. -- on that. 3 Q. Did you provide Mr. Crawford or anybody else at 4 that firm the documents we've just been talking about, 5 the OLS, or the EI that you did, and it sounds like in 6 the summer of 2021? 7 A. Anything that had actually -- that I had shared 8 with the previous attorneys that I still had I would 9 have provided to Mr. Crawford. 10 Q. Okay. 11 A. I'm not sure that there was any -- I'm not sure 12 that the OLS analysis was ever even -- anything done 13 other than just sort of looking at that real quickly in 14 Excel. I'm not sure that was ever reduced to anything 15 that -- that would have been transmissible either to 16 attorneys or to Mr. Crawford. But certainly anything 17 else that would fall in that category was provided to 18 him. 19 Q. Do you still have the OLS Excel file? 20 A. It's -- I guess it's possible. I haven't gone 21 back to look for it because I think, you know, it's 22 superseded by the EI analysis. But it's possible that 23 it's -- I could look. It's possible I guess. 24 Q. Without telling me the contents, was the OLS 25 consistent with the EI?</p>	<p style="text-align: right;">Page 32</p> <p>1 on CVAP for example, and CVAP doesn't account for 2 turnout. So R x C builds turnout estimation into the 3 estimation of the vote parameters, and that can -- in 4 that instance it can produce quite different results 5 than what you would get where -- where in the exact same 6 analysis for black voters there would be virtually no 7 substantive difference. So I'm never very surprised 8 if -- if the quality of data is low, which for -- that 9 means anything other than surnames for Hispanic voters, 10 it's just hard to say for sure if you're going to get a 11 clean -- a clean result out of the -- out of the OLS. 12 Q. I think I understand. But if you used voters 13 for your OLS and you used the -- either the -- an icon 14 Bayesian database that would solve that problem, 15 correct? 16 A. Yeah. I would expect you'd get a much -- you'd 17 get a much less problematic OLS result. I don't have -- 18 I haven't sort of stress-tested this on this particular 19 set of data, and I could be wrong about where the -- 20 where the -- where the noise in the OLS was coming from, 21 but my suspicion at the time was that it was coming 22 from -- from the lack of turnout information. 23 Q. Fair enough. I don't have any more questions 24 about that. 25 Are there any other reports that you've</p>

<p style="text-align: right;">Page 33</p> <p>1 done for SBISD that you haven't disclosed to us?</p> <p>2 A. That's -- I mean, I think we've covered all of</p> <p>3 what I recall of information, types of information that</p> <p>4 I've shared with -- with the attorneys, or the attorneys</p> <p>5 shared with the board, or that I was present to discuss</p> <p>6 with the board.</p> <p>7 Q. And as we're sitting here today you have not</p> <p>8 provided the plaintiff with that data for the OLS or the</p> <p>9 data for the EI, correct?</p> <p>10 A. Correct.</p> <p>11 Q. Thank you, sir. So let's just go a little bit</p> <p>12 more into your history, if you don't mind.</p> <p>13 How many times -- how many times have you</p> <p>14 been an expert in a case involving Section 2 of the</p> <p>15 Voting Rights Act?</p> <p>16 A. It would be 40 or 50 times.</p> <p>17 Q. Yeah. A bunch. Have you ever been an expert</p> <p>18 for an individual voter challenging an election statute?</p> <p>19 A. I don't know. Individual voter challenging an</p> <p>20 election statute?</p> <p>21 Q. As opposed to working for the entity.</p> <p>22 A. So mostly by happenstance, or whatever, I</p> <p>23 mostly work for entities, I think probably because I</p> <p>24 started doing this locally mostly in -- in the area of</p> <p>25 drawing districts for entities, and then ended up moving</p>	<p style="text-align: right;">Page 35</p> <p>1 A. I think Frost would have been -- I think Frost</p> <p>2 was the redistricting.</p> <p>3 Q. Right, right, right. That was the 1997 -- '95,</p> <p>4 '97 reset. I'm sorry.</p> <p>5 A. No. This was the two thousand -- this is</p> <p>6 when --</p> <p>7 Q. Oh. This is the mid-decade --</p> <p>8 A. Yeah. So this is when I worked -- so I worked</p> <p>9 for the legislative redistricting board because the</p> <p>10 state didn't -- didn't draw lines right. So the</p> <p>11 redistricting board drew the lines, but they couldn't</p> <p>12 draw the congressional lines. So the court drew the</p> <p>13 congressional lines. So that's my congressional plan.</p> <p>14 The court actually asked me to give them advice about</p> <p>15 how they should go about that, "what would you do, what</p> <p>16 would a neutral plan look like?" So I gave them some</p> <p>17 advice, and they acknowledged in the decision where they</p> <p>18 released the plan that they had appreciated my input, or</p> <p>19 whatever.</p> <p>20 So I told everybody, I was like, "This is a</p> <p>21 dream for somebody who studies Congress. I actually had</p> <p>22 a hand in a congressional plan." And they held exactly</p> <p>23 one election under it, and then the state -- the state</p> <p>24 just like gutted it like a fish. And so -- and so then</p> <p>25 this is where the Frost and the other congressional</p>
<p style="text-align: right;">Page 34</p> <p>1 into sort of the Section 2 issues beyond drawing the</p> <p>2 districts. So I mostly worked for entities, but I</p> <p>3 have -- I mean, I worked on cases where -- where</p> <p>4 representatives were challenging district plans, but I</p> <p>5 don't know -- I mean, I don't think they were</p> <p>6 challenging them as individual voters. I think their</p> <p>7 challenge was -- I could be wrong. I don't know why</p> <p>8 they were -- what their actual standing was.</p> <p>9 Q. Do you remember the representatives? Do you</p> <p>10 mean state representatives, or do you mean other</p> <p>11 governmental officials, incumbents?</p> <p>12 A. Well, I worked for a group of Democratic</p> <p>13 representatives I think organized by Martin Frost --</p> <p>14 Q. Okay.</p> <p>15 A. -- challenging a congressional plan. I worked</p> <p>16 for the Democratic Party in Florida, a challenge</p> <p>17 related to I think the congressional districts in</p> <p>18 Florida.</p> <p>19 Q. And do you have a time period for that, please?</p> <p>20 The '90s?</p> <p>21 A. The '90s I think.</p> <p>22 Q. And the Frost would have been in the '90s, too?</p> <p>23 That was the Bush v. Vera case, right?</p> <p>24 A. No.</p> <p>25 Q. Okay.</p>	<p style="text-align: right;">Page 36</p> <p>1 intervenors, they filed suit. They wanted to -- you</p> <p>2 know, they wanted to -- basically the point of their</p> <p>3 suit was that the state couldn't engage in a</p> <p>4 mid-redistricting, or mid-season redistrict, whatever,</p> <p>5 that it was already an official plan.</p> <p>6 Q. So you drew the plan in Balderas. That's the</p> <p>7 2000 case. And then you were an expert for the</p> <p>8 intervenors in the 2003 case?</p> <p>9 A. Yes. I didn't draw the plan, but I --</p> <p>10 Q. Advised?</p> <p>11 A. -- provided some guidelines in what I thought</p> <p>12 was appropriate for the court to use, and then testified</p> <p>13 on behalf of that plan, when the -- when the state</p> <p>14 replaced the plan and then there was a suit over whether</p> <p>15 the -- whether that mid-decade redistricting was</p> <p>16 appropriate or not. So that was with the -- it was a</p> <p>17 Democratic congressman who intervened. I don't remember</p> <p>18 exactly who all was in that, but -- but I remember the</p> <p>19 lawyer for the state, the first question when I was put</p> <p>20 on the stand was, you know, "Why did you switch sides?"</p> <p>21 And I said, "I didn't switch sides. You did. This is</p> <p>22 the" -- "this is the exact plan, you know, that I" --</p> <p>23 "when I was working for you that we helped the court</p> <p>24 to" -- because the Attorney General's Office was</p> <p>25 involved as well in trying to provide a neutral plan</p>

<p style="text-align: right;">Page 37</p> <p>1 that the court could use. And so --</p> <p>2 Q. And that lawyer was Andy Taylor?</p> <p>3 A. I think it was Andy at that point. Yeah.</p> <p>4 Yeah. That would have been back in Andy's day.</p> <p>5 Q. So it sounds like those were drawing districts.</p> <p>6 Did you ever do racially polarized voting --</p> <p>7 A. No, I was not -- sorry. I was not drawing</p> <p>8 districts in the -- when I was working for the</p> <p>9 congressional intervenors because they were just</p> <p>10 defending the court drawn district against the -- the</p> <p>11 district the state had drawn to replace it. But I don't</p> <p>12 remember the entire scope of what -- what I was actually</p> <p>13 looking at relative to the -- to the new draw as opposed</p> <p>14 to the court draw.</p> <p>15 Q. Fair enough.</p> <p>16 A. And I think in -- if I'm remembering the</p> <p>17 Florida case right, it did -- it was a -- it was voting</p> <p>18 rights issues related to the treatment of Hispanic</p> <p>19 voters in Florida. And I think it was also a</p> <p>20 congressional plan, specifically sort of how voters in</p> <p>21 southeast versus southwest Florida were treated in terms</p> <p>22 of drawing Hispanic districts.</p> <p>23 Q. What's the scope of your engagement in your</p> <p>24 contract, if you don't mind me asking?</p> <p>25 A. At least my understanding of it -- you know, I</p>	<p style="text-align: right;">Page 39</p> <p>1 issue. But I think also it's -- in my experience, and I</p> <p>2 don't think I'm alone in this, you know, the courts have</p> <p>3 not -- this is not an area broadly in which the courts</p> <p>4 have distinguished themselves in making clear what it is</p> <p>5 they want entities to do or plaintiffs to do or lawyers</p> <p>6 to do. So, I mean, I have my own sort of view of kind</p> <p>7 of how this -- how this makes sense. But I recognize</p> <p>8 that the term is used in a variety of ways. It's used</p> <p>9 to indicate, by some people, to indicate -- for example,</p> <p>10 many plaintiffs' experts believe that the definition of</p> <p>11 racially polarized voting is if 50 percent plus one of</p> <p>12 the minority voters vote for candidate A and 50 percent</p> <p>13 plus one of nonminority voters vote for candidate B then</p> <p>14 that's racially polarized voting, and that's -- I don't</p> <p>15 think that's true in the -- in itself I don't think</p> <p>16 that's true in the legal sense, and I don't actually</p> <p>17 think it's even an appropriate label for what's going on</p> <p>18 there.</p> <p>19 But, you know, that's an old dispute going</p> <p>20 all the way back to Brennan about -- in which I think</p> <p>21 Brennan captured exactly the issue there, is -- you</p> <p>22 know, I think -- I'm not sure everybody never says it,</p> <p>23 but I think in the current debate what Brennan would</p> <p>24 like is for people to come up with a name for that that</p> <p>25 isn't racially polarized voting in the sense that, you</p>
<p style="text-align: right;">Page 38</p> <p>1 probably pay less attention to these contracts than I</p> <p>2 should.</p> <p>3 Q. If you want to refresh your recollection --</p> <p>4 A. I just say what I -- what I agreed to before</p> <p>5 this was drawn up, and this looked to me like it didn't</p> <p>6 exceed that, was that I would provide a report that was</p> <p>7 essentially responsive to Dr. Stein's report, so that</p> <p>8 that was the extent of my involvement, was to provide</p> <p>9 response and commentary to his report as opposed to</p> <p>10 analysis itself. It was -- my role was to -- basically</p> <p>11 to provide a critique and context for Dr. Stein's</p> <p>12 report.</p> <p>13 Q. And so you have been hired in the past by SBISD</p> <p>14 to determine whether or not elections are racially</p> <p>15 polarized in SBISD elections, correct?</p> <p>16 A. That was certainly one of the tasks I was asked</p> <p>17 to perform previously, yes.</p> <p>18 Q. Given your time as an election law expert,</p> <p>19 racially polarized voting expert, and your association</p> <p>20 with SBISD since I guess the early 2000s, do you believe</p> <p>21 that elections in SBISD are racially polarized?</p> <p>22 A. I try pretty hard not to reach legal</p> <p>23 conclusions in my work as an expert partly because I'm</p> <p>24 not a lawyer, and it always pisses me off when lawyers</p> <p>25 reach expert conclusions. And so there's sort of a turf</p>	<p style="text-align: right;">Page 40</p> <p>1 know, the public understanding of that is -- is that</p> <p>2 voting is polarized by race, meaning by some sentiment</p> <p>3 or concerns of the race of voters or the race of</p> <p>4 candidates, as opposed to just these two groups maybe</p> <p>5 voting differently for the same reason lots of other</p> <p>6 groups might vote differently.</p> <p>7 Q. I think I -- I understand that.</p> <p>8 A. Yeah. I'm just not -- I'm not sure if</p> <p>9 you're -- what is -- what is it you're asking me?</p> <p>10 Have I reached a conclusion, a legal --</p> <p>11 Q. No.</p> <p>12 A. In a legal sense, no.</p> <p>13 Q. I'm asking you as an expert are Latinos</p> <p>14 politically cohesive in SBISD elections?</p> <p>15 MR. CRAWFORD: I'm going to object to the</p> <p>16 extent that it's outside the scope of this engagement.</p> <p>17 And I'll let Dr. Alford make that determination but --</p> <p>18 Q. (BY MR. GOLANDO) You can still answer, sir.</p> <p>19 A. I'd say, you know, based on -- I mean, for</p> <p>20 example, based on the -- on Dr. Stein's report I'd say</p> <p>21 there's evidence of modest cohesion among Latino voters.</p> <p>22 So there's certainly no evidence of the sort we would</p> <p>23 see in the black voters. I don't think Hispanic voters</p> <p>24 are voting 90 percent one direction or another. But</p> <p>25 there's certainly evidence that suggests that at least</p>

<p style="text-align: right;">Page 41</p> <p>1 in some of the elections more than -- more than a bare 2 majority of Hispanic voters are favoring Hispanic 3 candidates. 4 Q. Based on your experience as a election observer 5 and an analyst for SBISD in the last 20 years of your 6 employment here, or engagement here, do you believe in 7 your expert opinion that Latinos are politically 8 cohesive outside of the Stein report? 9 A. I would say modestly to moderately cohesive. 10 Q. Do you believe that, same question, as to 11 Anglos? Are they politically cohesive in SBISD 12 elections? 13 MR. CRAWFORD: Same objection as before to 14 the extent it exceeds the scope of his engagement. 15 MR. GOLANDO: Yes, sir. 16 A. I think it's harder to say they are, but I 17 think -- on balance I'd say moderately co -- modestly -- 18 again, sort of modestly to moderately cohesive. So 19 in -- again, in the sense of the sort of Gingles 2 and 20 Gingles 3 threshold, not in sort of the broader totality 21 of the circumstances. But just addressing it as, you 22 know, what -- what my guess would be about Gingles 2 or 23 my guess about where you would be on Gingles 3 that's -- 24 that's what I would guess. And I think that's roughly 25 what Dr. Stein's analysis suggests.</p>	<p style="text-align: right;">Page 43</p> <p>1 University of Georgia before I came to University of 2 Georgia. We didn't actually overlap, but I had had 3 conversations with him. At that point prior to -- to 4 actually working with him I had met him at a convention. 5 And he's the one who at that time was the -- I can't 6 remember if he was the -- I think -- yeah. He was the 7 department head at that time. Georgia actually tried to 8 hire me twice. And the first time -- my former mentor 9 from U of H, David -- Dr. David Brady was the chair, and 10 he had contacted me and tried to work out a deal to get 11 me to come to Rice. And I really wasn't -- I hadn't 12 been at Georgia very long, and I wasn't ready to go. So 13 I ended up turning it down, and he was very unhappy 14 about that. And then a year later circumstances had 15 changed. I was in the middle of a divorce. 16 Q. I'm sorry. 17 A. I was not very happy with my colleagues at the 18 University of George. And by then Dr. Stein was the 19 chair. And so he called up and said, you know, "We 20 would like you to come to Rice." And I said, you know, 21 "I'm not a very good negotiator, so whatever you offer 22 me I'm going to take it." And he said, "I'm not a good 23 negotiator either because whatever you want we'll give 24 it to you." And so we then worked out something that 25 sort of fell within those -- within that range, and I</p>
<p style="text-align: right;">Page 42</p> <p>1 Q. (BY MR. GOLANDO) Would you based on your 2 experience as an expert and a observer of SBISD 3 elections in your 20 years here and your prior 4 engagement do Latinos support different candidates than 5 Anglos in SBISD elections? 6 A. Sometimes. 7 Q. How often? 8 A. I don't know how often, but it certainly 9 happens. 10 Q. Can you recall a time when they didn't based on 11 your analyses and your expertise? 12 A. I don't know. I mean, I can't think of a 13 specific -- a specific example, but I -- but I'm not at 14 all sure that that is -- that it's generally the case 15 across elections that -- in fact, I suspect it's not. 16 My guess is that there are elections in which both 17 Anglos and Hispanics are supporting the same candidates, 18 but I don't -- again, I -- I don't know for certain, but 19 that's my guess. 20 Q. Okay. I understand. We're going to talk a 21 little bit about Bob Stein now. Do you know Professor 22 Stein? 23 A. I do. 24 Q. How do you know him, sir? 25 A. He hired me to come to Rice. He had been at</p>	<p style="text-align: right;">Page 44</p> <p>1 was hired. And David Brady never forgave me for 2 allowing Stein to outhire him on the recruiting front. 3 So -- but I've known him since I -- I knew him before I 4 came to Rice, but certainly since I came to Rice, and 5 we're -- we've always been close colleagues. We're 6 close personal friends. Our families are friends. He 7 was just having dinner with my daughter in Washington, 8 D.C. over the weekend. 9 Q. Oh. Wow. 10 A. So we remain very close. 11 Q. Do you know his reputation as a scholar? 12 A. Yes. 13 Q. What is his reputation as a scholar? 14 A. It's a excellent rep -- he's very prolific. 15 He's very well-respected. He's moved around across a 16 variety of areas in his career and always had -- the 17 areas he's worked in has always ended up being important 18 work, widely recognized work, so -- 19 Q. How would you personally rate him as a scholar, 20 Professor Stein? 21 A. On a -- what are we doing here? A scale of one 22 to ten or -- 23 Q. Is he an expert in his studies? 24 A. Yes. 25 Q. Okay. Is he -- is he at the top levels of his</p>

<p style="text-align: right;">Page 45</p> <p>1 scholarly research?</p> <p>2 A. I would say in the areas that he works in he</p> <p>3 always ends up producing work that is among the best of</p> <p>4 the work that's done in that area. So I would say that</p> <p>5 both -- when he was doing things like the distribution</p> <p>6 of federal funds, pork barrel, his more recent work on</p> <p>7 things like ballot form and access, that sort of stuff,</p> <p>8 again very -- he does very good, very high quality work.</p> <p>9 Q. Would you call him an expert in social science</p> <p>10 statistical research?</p> <p>11 A. That's a time-bound question. So when I came</p> <p>12 out of graduate school Stein and I both would have been</p> <p>13 experts in statistical social science research. We were</p> <p>14 like go-to people. We were, you know, the young Turks</p> <p>15 and, you know, drove all our old professors crazy by,</p> <p>16 you know, asserting they had no clue what they were</p> <p>17 doing and we did. But those things change over time.</p> <p>18 So, you know, he's a -- he's a extremely competent data</p> <p>19 analyst and is I -- I would say among people who are not</p> <p>20 actually political methodologists he's -- is as skilled</p> <p>21 as anybody doing work in social sciences today. But</p> <p>22 he's -- political science didn't really have</p> <p>23 methodologists when he and I came out of graduate</p> <p>24 school. And now we have -- we have people in our</p> <p>25 department who we hire as methodologists. They only</p>	<p style="text-align: right;">Page 47</p> <p>1 Q. Yeah. Me too.</p> <p>2 A. My -- the professor who taught me methods at</p> <p>3 university of Iowa said, "By the end of this course</p> <p>4 you'll not only recognize that OLS is the superior</p> <p>5 research method, you'll also recognize that it's a way</p> <p>6 of life and will be the only thing you dream about."</p> <p>7 And I thought that was an exaggeration, but I</p> <p>8 honestly -- it is an approach to life. You know, life</p> <p>9 is about trying to understand the world around you. And</p> <p>10 to this day when I'm -- when something puzzles me, like</p> <p>11 the behavior of one of my daughters for example, I</p> <p>12 actually like find myself unable to not think of it as</p> <p>13 an OLS equation. So, yes, I -- I worship at the alter</p> <p>14 of ordinary least squares regression.</p> <p>15 Q. Me too. I do. And I remember my scopes and</p> <p>16 methods class. I know exactly how you feel.</p> <p>17 So is ordinary least squares a</p> <p>18 scientifically verifiable way to evaluate racially</p> <p>19 polarized voting?</p> <p>20 A. Yes.</p> <p>21 Q. Okay. Is OLS a technique generally accepted in</p> <p>22 the social scientific community?</p> <p>23 A. Yes.</p> <p>24 Q. Has OLS analysis been subjected to peer review</p> <p>25 and publication?</p>
<p style="text-align: right;">Page 46</p> <p>1 teach methods. They only research methods. We're not</p> <p>2 in that category. Neither of us are methodologists in</p> <p>3 that sense. We're not going to develop the next --</p> <p>4 we're not Gary King --</p> <p>5 Q. Right.</p> <p>6 A. -- which is -- I guess you could say for pretty</p> <p>7 much everybody in the United States. But he</p> <p>8 certainly -- he employees up-to-date methods, and he</p> <p>9 does them accurately and skillfully for the -- for his</p> <p>10 research question. But he's more interested in</p> <p>11 answering a research question than he is in developing a</p> <p>12 methodology.</p> <p>13 Q. I don't blame him. Do you agree that Bob</p> <p>14 Stein's expert opinion is relevant to the task at hand?</p> <p>15 A. Yes.</p> <p>16 Q. Okay. Would you agree that racially polarized</p> <p>17 voting analyses using ecological regression rest on</p> <p>18 scientifically reliable foundations generally?</p> <p>19 A. Yes.</p> <p>20 Q. Would you call Bob Stein an expert or a top</p> <p>21 scholar in analyzing voter behavior?</p> <p>22 A. Yes.</p> <p>23 Q. Are you familiar with the use of ordinary least</p> <p>24 squares?</p> <p>25 A. Oh, yes.</p>	<p style="text-align: right;">Page 48</p> <p>1 A. Yes.</p> <p>2 Q. Okay. Can OLS be tested and verified?</p> <p>3 A. Yes.</p> <p>4 Q. Does OLS have a known error rate?</p> <p>5 A. It -- assuming you meet the assumptions of OLS</p> <p>6 it is -- what's called a BLUE method is the best linear</p> <p>7 unbiased estimator. So -- but that means you have to</p> <p>8 meet the -- the basic assumption. So, yes, it's --</p> <p>9 there is a way to test the accuracy. OLS provides</p> <p>10 measures of the stability and usability of its results.</p> <p>11 But like any technique they do depend on meeting the</p> <p>12 assumptions.</p> <p>13 Q. Do you believe that Dr. Stein is an expert</p> <p>14 qualified by knowledge, skill, experience, training, and</p> <p>15 education?</p> <p>16 A. Yes.</p> <p>17 Q. Do you believe that Dr. Stein's opinion is</p> <p>18 based on sufficient data?</p> <p>19 A. So we're getting into the crux of things here.</p> <p>20 I think the -- I think the data he has is probably</p> <p>21 enough to answer the question. I don't think it's</p> <p>22 necessarily the best data he could have. But I don't</p> <p>23 think the -- and I don't -- I don't disagree with the</p> <p>24 results of the analysis he did as it is, but I don't</p> <p>25 think -- I don't think it's sufficient to answer at</p>

<p style="text-align: right;">Page 49</p> <p>1 least some of the questions that routinely have to be 2 answered in my view in a full racially polarized voting 3 analysis. 4 Q. I want to be very clear. We'll get to see your 5 problems with the Stein report in a moment. I promise 6 you. But does the data he used, is it sufficient to 7 determine the outcome? 8 A. I think the -- yes, I think so. 9 Q. Do you believe that Dr. Stein's opinion is the 10 product of reliable principles and methods? 11 A. Again, I don't want to over endorse or under 12 endorse. There's -- yeah, I think he's running OLS 13 correctly. I don't doubt that those are the right 14 parameters coming out of OLS. I -- I just think it's 15 not -- the data has been aggregated in a way that I 16 think is -- I have questions about the way the data has 17 been aggregated. I have questions about the quality of 18 the input data on the demographic side, the BISG result, 19 and I have questions about at least some of the ways in 20 which election result data was treated. So I don't 21 exactly -- it's not the data itself that's problematic, 22 but the way -- you can't divorce that from the way it's 23 been aggregated for input into the -- into estimation. 24 And I think that's where -- where we have disagreements. 25 Q. I think that's a reasonable thing to say. Do</p>	<p style="text-align: right;">Page 51</p> <p>1 start -- because, again, "cohesive" is a -- is not a 2 binary term. Cohesive is a -- is a term that's being 3 applied to what is, in fact, a continuous measure from 4 zero cohesion to perfect cohesion. And so if a measure 5 goes from no cohesion to perfect cohesion there's always 6 a question of "what do people mean by cohesion?" And I 7 know some people mean by cohesion anything other than 8 zero, which means actually by definition in virtually 9 every election in the United States every group is 10 cohesive. I take that to be a nonsensical -- I know 11 that I'm in the minority here of my -- at least some of 12 the experts. But I take that to be nonsensical with 13 regard to providing that information to the court 14 because -- because the court has said that Gingles 2 is 15 a threshold test. And if the threshold is by definition 16 always met then it doesn't belong in the Gingles -- it's 17 not a threshold at all. It's not even a test. There's 18 no reason -- there's no reason to even have it there. 19 So, you know, we can go down that slippery 20 slope. And you know, we can start at 50 percent, which 21 is zero cohesion. We can start at 100 percent, which is 22 perfect cohesion. And then the question is sort of 23 where does -- where does cohesion fall on that scale. 24 And I don't believe it's the entire scale. So one way 25 of thinking about that is this -- this actually isn't a</p>
<p style="text-align: right;">Page 50</p> <p>1 you believe that Dr. Stein has applied the principles 2 and methods reliably to the facts of the case? You may 3 disagree. But has he done so reliably? 4 A. So it's interesting how certain things come 5 back routinely in depositions. So within the narrow 6 meaning, the narrow statistical meaning of reliability, 7 yes. 8 Q. Perfect answer. I appreciate it. All right. 9 Let's talk about racially polarized voting generally, 10 and then I promise you we'll get to your words. I 11 promise. I just want to make sure -- 12 A. It's fine with me if we don't. 13 Q. Because I think primaries are important. And, 14 again, if I ask you a question that doesn't make sense 15 it's not your fault. It's my fault. Okay? 16 If 90 percent of Latino voters voted for 17 one candidate, are they politically cohesive together in 18 a given jurisdiction? 19 A. Yes. 20 Q. Okay. If 80 percent of Latino voters voted for 21 one candidate, are they politically cohesive together? 22 A. Yes. 23 Q. Okay. If 70 percent of Latino voters voted for 24 one candidate, are they politically cohesive together? 25 A. I don't know. I mean, that's where I would</p>	<p style="text-align: right;">Page 52</p> <p>1 scale from 50 to 100, of course, because 50 would 2 suggest half cohesion, and it's zero. So turn it into 3 what it really is, is zero to 100 scale. And in that 4 zero to 100 scale 75 is actually at 50 percent cohesion. 5 It's half of the values are less cohesive. Half would 6 be more cohesive. So that's a kind of midrange of 7 cohesion, and so that's sort of roughly -- in my view 8 roughly you clearly have cohesive behavior at sort of 9 80 -- 75, 80, 90 percent. But the question of what you 10 have at -- once you get to something like 70 or 60 or 11 51, I mean, I just think you're -- again, the court has 12 provided exactly zero guidance here. So I just try to 13 be careful in the use of the language. So I think at 70 14 you're starting into a -- you're getting into a range 15 where you might say there's -- we talked earlier on 16 things like modest or moderate cohesion. So there's 17 some moderate level of cohesion there. And I think 18 that's -- sort of in that 60 to 70 percent range is what 19 I think of as moderate or modest cohesion. Below 65, 20 certainly below 60, I don't really think that's -- if 21 that's cohesion, then, again, it doesn't -- in a Gingles 22 2 sense then cohesion doesn't matter because cohesion is 23 always greater than 50 so -- 24 Q. So just to be clear, so from 60 to 70 it's 25 moderate cohesion? Sixty to 75. I don't want to</p>

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1 misstate --

2 A. Yeah. Well, yeah, I mean, it's -- in that sort
3 of middle range I think the -- the question, again, it's
4 very -- it's not hard to see. So I don't think many
5 people would dispute that 80 to 100 is cohesion. And in
6 that sense if you were going to make it symmetric then
7 50 to 70 would be noncohesion. Right? So if the upper
8 20 percent is clearly cohesion then the lowest possible
9 20 percent, if you're going to have a scale that
10 balances in a -- you know, in a kind of a normal sort of
11 scale sense, then you could describe everything below 70
12 as not cohesive and -- and sort of, you know, kind of --
13 then you'd have kind of a middle range in there
14 somewhere.

15 **Q. If 70 percent of the Latino community supports**
16 **a candidate, that means that 30 percent didn't, correct?**

17 A. Correct.

18 **Q. So two-to-one?**

19 A. Yep.

20 **Q. More than two-to-one really, right?**

21 A. (Moving head up and down.)

22 **Q. And that's still not cohesive enough from your**
23 **perspective?**

24 A. It's -- again, it's -- I don't know what you
25 mean by "cohesive enough." But I don't think it's

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1 majority or not a majority. That's the dichotomy, and
2 because it's a dichotomy it has a bright line. That's
3 the great thing about dichotomies: "yes" or "no." If
4 this is a "yes" or "no" question, then where is the --
5 where does the -- where does the "no" become a "yes"?

6 **Q. Fair enough.**

7 A. And so I think -- my preference because I'm not
8 making that legal decision, it's not up to me to say --
9 I'm always getting pressured, you know, "but you're the
10 expert, so in your expert opinion is this legally" --
11 you know, "is this cohesive voting"? I just want to
12 tell the court how cohesive the voting is from zero to
13 100. Right? And if you want -- you want to force me to
14 put a term on it then in the middle I can put a term
15 like "moderate" or whatever. And then if the judge
16 thinks -- the number is still there. In your example
17 the 70 is there. If a judge thinks that's what -- what
18 the court means by cohesive voting, have at it. I'm
19 glad I don't have to make that decision.

20 **Q. Me too, for the record. And I want to be very**
21 **clear. I'm not interested in your legal opinion. I**
22 **mean, I am generally. You're a nice guy. You're a**
23 **smart guy. But for the testimony I'm only interested in**
24 **your expert opinion as a social science researcher. And**
25 **I think I understood your question so -- or your answer**

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1 helpful given the nature not only of what the court
2 is -- so there are two questions here I think. I mean,
3 one is is it cohesive enough to clear the threshold
4 test? And that's -- then there's another question
5 because, of course, racially polarized voting enters
6 twice, one is in its mechanical Gingles 2 and 3, and
7 then again in the totality of the circumstances. And
8 while I don't think those should be -- given their
9 proximity to each other I think it's inefficient to have
10 them mean different things. I'm aware that the -- from
11 cases I've been involved in that currently there are a
12 lot of judges who want to make those two very different
13 things, the Gingles 2 and 3 racially polarized voter,
14 and the totality of circumstances racially polarized
15 voting. You know, whatever the judges want to do I'm
16 fine with. I give them the information. They make
17 sense out of it.

18 But I think it's an awkward situation both
19 in terms of analysis and in terms of the law to say that
20 they're both -- we're going to call both of them
21 racially polarized voting, but they're going to be
22 defined in very different ways and very different
23 implications. So I just think if the Gingles 2 test
24 is -- are minority voters voting cohesively then that's
25 either going to need to be defined as in are they a

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1 to my bad questions.

2 **I'm asking the same questions about Anglo**
3 **voters because I wonder if there's a difference in your**
4 **mind. If 90 percent of Anglo voters support one**
5 **candidate, are they politically cohesive?**

6 A. Yes.

7 **Q. Eighty percent?**

8 A. Yes.

9 **Q. Seventy percent?**

10 A. I think you're getting -- again, now you're in
11 a range where they're sort of what you might describe as
12 modest or moderate cohesion. It's certainly in that --
13 in that kind of range. And I think that's where -- if
14 you think about sort of functional definition kind of
15 thing, what's going on here, there it becomes clear the
16 two things are interacting with each other. Right? And
17 that's what I think is both important to recognize, but
18 also I think problematic in the sense that -- on the --
19 on the Gingles 2 side there's just this question of
20 minority cohesion. On the Gingles 3 side there's
21 minorities voting or majorities voting cohesively so as
22 to usually defeat. Well, so as to usually defeat the
23 level then of what would be defined as majority cohesion
24 is going to be on a sliding scale depending on minority
25 cohesion.

14 (Pages 53 to 56)

<p style="text-align: right;">Page 57</p> <p>1 And weirdly enough it's going to slide in 2 the direction that the less cohesive minorities are the 3 more likely it is that at the same levels of cohesion 4 majorities are voting cohesively to defeat the preferred 5 candidate. If the preferred candidate is only getting 6 51 percent of the vote, then a majority that's in fact 7 splitting its vote almost perfectly evenly can still be 8 sufficiently cohesive to defeat the candidate. So this 9 is a weird scale in which as -- the further away we move 10 from racially polarized voting the easier it is to find 11 racially polarized voting in that sense because, again, 12 these are -- in essence they are no longer -- they're no 13 longer absolute -- again, a threshold test must mean 14 that you can -- that you can in isolation answer that 15 question. And judges in my experience frequently join 16 two and three together to ask what they call the -- the 17 Gingles 2 and 3 are the racially polarized voting 18 question. Once you join them together they are not 19 threshold. Two is not a threshold test if it doesn't 20 stop the inquiry at two. 21 Q. I understand. 22 A. And so I don't have the solution to that issue, 23 but it is problematic. And so that's why I think it's 24 better to be imprecise in the language about -- about 25 calling something cohesion or not cohesion. It's better</p>	<p style="text-align: right;">Page 59</p> <p>1 about it already, but I want to make sure I get you on 2 the record. 3 What do you believe racially polarized 4 voting is, and how would you define it? 5 A. So I would define racially polarized voting as, 6 in the broadest sense, as a situation where -- where 7 voting is being affected by racial considerations at a 8 level that -- you know, given the -- the sort of 9 numerical conditions and sort of things you assess in 10 Gingles 1, that you have a situation where minorities 11 are not able to elect minority candidates in a 12 particular setting and would be able to in the -- 13 whatever the legally available alternative settings are. 14 Q. I think I understand that. So I'm going to ask 15 you a couple of general questions about that, if you 16 don't mind. 17 If 90 percent of the Latinos support 18 candidate A and 75 percent of the Anglos support 19 candidate B in the same race, is that racially polarized 20 voting, assuming your -- your first part of your 21 definition? 22 A. This is where -- I know you're going to be 23 happy to hear this. But I don't think you can determine 24 if voting is racially polarized in a single election. 25 You can say the election is compat -- that's an election</p>
<p style="text-align: right;">Page 58</p> <p>1 to be imprecise about that and to just look at exactly 2 how all that's operating and then think about what that 3 means because ultimately, you know, Gingles 1, 2, and 3 4 is about determining if there's a solution in order to 5 answer the question about whether there's a tort. And 6 thinking about the solution is where you really do have 7 to take it all into account because if cohesion is 8 really low on the part of minorities then if -- if it's 9 also the case that it's very difficult to get a district 10 that's above majority, then the district is not going to 11 be a district that's typically going to work. Right? 12 It isn't going to solve the -- it isn't going to solve 13 the problem. Fifty percent plus one voters lets you 14 control the district as long as you're perfectly 15 cohesive. Well, if your cohesion level is 52 percent, 16 the district isn't going to do anything. Right? It's 17 going to give you 25 percent of the vote. It's not 18 going to win anything. It's not a solution to the 19 problem. And, in fact, the problem is not the drawing 20 of district lines. Right? The problem was very low 21 cohesion. You know, splitting your vote doesn't let you 22 control politics. And so that's -- that's my short 23 answer. 24 Q. Fair enough. All right. Let's talk a little 25 bit about racially polarized voting. We've talked a lot</p>	<p style="text-align: right;">Page 60</p> <p>1 that's compatible with -- with the existence of racially 2 polarized voting, but I don't think it establishes 3 racially polarized voting. And I don't think it's 4 really -- you can given that -- if that's the fact 5 pattern, I got one election in that fact pattern, I have 6 no idea if voting in that jurisdiction is racially 7 polarized or not. All I can tell you about is that 8 one -- is that one election. 9 Q. That one election is certainly racially 10 polarized, correct? 11 A. The election? 12 Q. There's -- I'm sorry. I don't want to 13 mischaracterize your testimony. I think you said there 14 was -- it would be an example of racially polarized 15 voting. Correct? 16 A. So the election is compatible with racially 17 polarized voting because I think it's important that 18 when we -- when you characterize voting in an area 19 that's racially polarized, you're -- you're 20 characterizing the behavior of the voters over -- over a 21 set of elections and over a type of election stimulus. 22 And so I think it's -- it isn't a characteristic of the 23 election. It's a characteristic of the voters. So I 24 think that -- we don't know if that is an appropriate 25 characterization of what the voters do in that -- in</p>

15 (Pages 57 to 60)

<p style="text-align: right;">Page 61</p> <p>1 that election. I mean, just for example, if that's a --</p> <p>2 you know, if that's a general partisan election between,</p> <p>3 you know, two Hispanic candidates, one Democrat and one</p> <p>4 Republican, I don't think that's racially polarized</p> <p>5 voting.</p> <p>6 Q. Right.</p> <p>7 A. But it has -- the election has those features.</p> <p>8 So, again, it's -- it's not an election that would stand</p> <p>9 as obviously incompatible with racially polarized</p> <p>10 voting, but I -- in and of itself that doesn't tell you</p> <p>11 either that the election is racially polarized or that</p> <p>12 the voters are behaving in a fashion compatible with</p> <p>13 racially polarized voting.</p> <p>14 Q. So imagine that election, same thing happens</p> <p>15 five elections in a row. Is that racially polarized?</p> <p>16 A. Again, if -- if you're saying that that happens</p> <p>17 five times in a row -- and, again, I'd want to know what</p> <p>18 the -- you know, I want to know the race of the -- or</p> <p>19 ethnicity of the candidates.</p> <p>20 Q. Fair enough. So let's say Latino candidate A</p> <p>21 is Latino, Anglo candidate B is Anglo, these are</p> <p>22 nonpartisan elections, it happens five times in a row.</p> <p>23 Is that racially polarized voting?</p> <p>24 A. Assuming that the -- assuming that the -- that</p> <p>25 the Hispanic candidate -- that the Hispanic candidate,</p>	<p style="text-align: right;">Page 63</p> <p>1 Texas.</p> <p>2 Q. No.</p> <p>3 A. But that's a different topic. And that's not</p> <p>4 just for Ted Cruz. Right? It's just -- there are lots</p> <p>5 of -- Texas has lots of Republican Hispanics, and when</p> <p>6 they run as Republicans they do not get the majority of</p> <p>7 the Hispanic vote. When they run as Democrats, they get</p> <p>8 the majority of the Hispanic vote. And when they run</p> <p>9 against Anglos as -- and when Hispanic Republicans run</p> <p>10 against Anglo Democrats the Anglo Democrats gets the</p> <p>11 majority of the vote. So in partisan elections it's not</p> <p>12 the case, no longer the case -- it may well have been</p> <p>13 the case in the past -- but it is no longer the case in</p> <p>14 the sort of current polarized atmosphere that the race</p> <p>15 of the candidate for either co-ethnics or for -- for</p> <p>16 nonethnic groups is -- is the determinative factor in</p> <p>17 voting behavior.</p> <p>18 Q. How about in nonpartisan races, like the SBISD</p> <p>19 race?</p> <p>20 A. I'd say in nonpartisan elections it's -- it's</p> <p>21 certainly variable depending on the -- you know, the</p> <p>22 area of the country and -- and some local factors. But</p> <p>23 there I think you're -- it's more often the case there</p> <p>24 that you would see Hispanic voters preferring Hispanic</p> <p>25 candidates.</p>
<p style="text-align: right;">Page 62</p> <p>1 who is also the Hispanic preferred candidate, is being</p> <p>2 defeated, in most of those elections then I think that's</p> <p>3 a sort of a -- a nice little set piece for what racially</p> <p>4 polarized voting looks like.</p> <p>5 Q. Same question, same assumptions, please. For</p> <p>6 90 percent support of Latinos for the Latino candidate,</p> <p>7 and 65 percent support for Anglos, and this outcome is</p> <p>8 the same?</p> <p>9 A. Outcome is the same I think the -- yeah, the</p> <p>10 result is the same.</p> <p>11 Q. And that would be racially polarized voting,</p> <p>12 correct?</p> <p>13 A. Yes.</p> <p>14 Q. Fair enough. In your time as a litigation</p> <p>15 expert and a social scientist, do you agree that</p> <p>16 Hispanic surname candidates are the likely preferred</p> <p>17 candidate of choice for Latino voters? Likely.</p> <p>18 A. Well, I'd want to qualify it a little bit</p> <p>19 because --</p> <p>20 Q. Sure.</p> <p>21 A. -- in my experience in modern U.S. elections</p> <p>22 that depends entirely on which party that candidate is</p> <p>23 running under.</p> <p>24 Q. Let's assume --</p> <p>25 A. Ted Cruz is not the choice of Latino voters in</p>	<p style="text-align: right;">Page 64</p> <p>1 Q. In Texas and SBISD, correct?</p> <p>2 A. I think that's -- I think that's a fair</p> <p>3 statement. Yeah, I would -- that's what I would expect</p> <p>4 to see if I was coming in novel into some area. That</p> <p>5 would -- it wouldn't necessarily be the case, but it's</p> <p>6 what I would expect to be the case.</p> <p>7 Q. And that's what you did see when you did your</p> <p>8 OLS report and your EI report, correct?</p> <p>9 A. I'm not a hundred percent sure.</p> <p>10 Q. Well, I don't want you to speculate. If you</p> <p>11 don't recall, you don't recall.</p> <p>12 A. Yeah.</p> <p>13 Q. All right. Let's talk about your great report.</p> <p>14 I'm going to hand you a copy of it. I think I've</p> <p>15 labeled it as Exhibit No. 2. Could you review this and</p> <p>16 make sure that it's authentic?</p> <p>17 A. This looks like it.</p> <p>18 Q. That's your expert report, correct?</p> <p>19 A. Yes.</p> <p>20 Q. Okay. And we've labeled that Exhibit 2. In</p> <p>21 preparation for your report, other than reviewing the</p> <p>22 data provided by the plaintiff did you review anything</p> <p>23 else?</p> <p>24 A. So I reviewed the data. I reviewed the --</p> <p>25 Dr. Stein's report itself. I looked at several of the</p>

16 (Pages 61 to 64)

<p style="text-align: right;">Page 65</p> <p>1 articles that he had cited. I looked at a couple of</p> <p>2 other things that I provided you here that are sort of</p> <p>3 things that came to my attention as a result of looking</p> <p>4 through the things in his report, one being this kind of</p> <p>5 a general statement from a group in California about the</p> <p>6 use of at-large elections and its effect on Latino</p> <p>7 representation, and the other being something from the</p> <p>8 Texas Republican Party about the -- essentially</p> <p>9 injecting -- deliberately injecting partisanship into</p> <p>10 nonpartisan elections.</p> <p>11 Q. That's the totality of what you -- all those</p> <p>12 documents form the basis of your report, correct?</p> <p>13 That's the totality?</p> <p>14 A. It's everything I recall. We get into</p> <p>15 specifics and I recall something else I'll -- I will</p> <p>16 let you know, but that's what I recall.</p> <p>17 Q. I appreciate it. In preparation for this</p> <p>18 report, did you do any -- did you review any survey</p> <p>19 data?</p> <p>20 A. No, I don't think so.</p> <p>21 Q. Did you perform a survey about voter behavior</p> <p>22 in SBISD?</p> <p>23 A. No.</p> <p>24 Q. Okay. For this report did you do an ecological</p> <p>25 regression analysis or EI or any kind of a OLS?</p>	<p style="text-align: right;">Page 67</p> <p>1 SBISD elections, in formation of this report?</p> <p>2 A. Other than what's provided by Dr. Stein, no.</p> <p>3 Q. Okay. I have asked this before, but I want to</p> <p>4 make sure that I'm clear. In your -- in preparation for</p> <p>5 your report, did you perform any independent racially</p> <p>6 polarized voting analysis?</p> <p>7 A. No.</p> <p>8 Q. Okay. How long did it take you to review the</p> <p>9 data?</p> <p>10 A. I don't know. I have a -- I have a billing</p> <p>11 spreadsheet someplace. I could give you -- I could give</p> <p>12 you a very precise, down to a tenth of an hour, but I</p> <p>13 don't -- I don't recall offhand.</p> <p>14 Q. Was it 10 hours?</p> <p>15 A. I -- I really have -- as you might, as you</p> <p>16 probably -- it's that time of year. I'm working on a</p> <p>17 dozen cases simultaneously so I don't --</p> <p>18 Q. Me too.</p> <p>19 A. Yeah. I -- at some point those -- you know,</p> <p>20 I'll hit, you know, some at the bottom of a spreadsheet,</p> <p>21 and I'll know how much time I spent. I saw a report --</p> <p>22 I just looked at a -- some disclosure from another</p> <p>23 expert in Kansas. It was a guy I know at University of</p> <p>24 Michigan. And he was hired and provided a report for</p> <p>25 him two weeks later, along with a bill for \$63,000. I</p>
<p style="text-align: right;">Page 66</p> <p>1 A. No.</p> <p>2 Q. Okay. For this report did you analyze election</p> <p>3 returns in SBISD elections?</p> <p>4 A. No.</p> <p>5 Q. For this report did you review campaign finance</p> <p>6 data?</p> <p>7 A. No.</p> <p>8 Q. Did you for this report -- did you analyze</p> <p>9 incumbency advantage for this report?</p> <p>10 A. No.</p> <p>11 Q. For this report did you analyze any of the</p> <p>12 issues that form the basis of the campaigns themselves?</p> <p>13 By which I mean policy issues.</p> <p>14 A. No.</p> <p>15 Q. Did you analyze any partisan data for this</p> <p>16 report?</p> <p>17 A. No.</p> <p>18 Q. Okay. Did you look at ballot drift and how</p> <p>19 that would have affected outcomes?</p> <p>20 A. No.</p> <p>21 Q. Did you look at ballot formation and how that</p> <p>22 would have affected outcomes?</p> <p>23 A. No.</p> <p>24 Q. Did you look at any kinds of early vote</p> <p>25 patterns or precinct data associated with elections, for</p>	<p style="text-align: right;">Page 68</p> <p>1 thought I'm doing something wrong because I know he's --</p> <p>2 I know he's working for at least a dozen people because</p> <p>3 I see his name all the time. And, my God, I -- you</p> <p>4 know, whenever I hit "add" it never adds up to anything</p> <p>5 like that in a two-week period. That's pretty -- that's</p> <p>6 pretty astonishing. So I can tell you this. I know</p> <p>7 when I saw that I was shocked, so I know it's less than</p> <p>8 \$63,000 worth of my time.</p> <p>9 Q. How much of the report did you write?</p> <p>10 A. I wrote the entire report.</p> <p>11 Q. Mr. Crawford and none of the lawyers wrote the</p> <p>12 report for you?</p> <p>13 A. That's correct.</p> <p>14 Q. These are your words, these are your findings,</p> <p>15 correct?</p> <p>16 A. My words, my findings.</p> <p>17 Q. And you didn't use a data assistant to review</p> <p>18 the data?</p> <p>19 A. No, I did not.</p> <p>20 Q. And you didn't use Mr. Stevenson? I'm not sure</p> <p>21 if I'm getting the name correct.</p> <p>22 A. Stevenson.</p> <p>23 Q. Okay. It's Dr. Stevenson I suppose?</p> <p>24 A. Yes. I did not -- Dr. Stevenson was not</p> <p>25 involved.</p>

<p style="text-align: right;">Page 69</p> <p>1 Q. This is 100 percent your work product?</p> <p>2 A. Correct.</p> <p>3 Q. Yes, sir. What instructions were you given by</p> <p>4 counsel in preparation of the report?</p> <p>5 A. You know, we discussed at the time we were</p> <p>6 negotiating my employment, you know, what -- what I</p> <p>7 could do for Mr. Crawford in this case, which was to,</p> <p>8 you know, provide a commentary on Dr. Stein's report and</p> <p>9 Dr. Stein's analysis. And that was -- that was the</p> <p>10 extent of the discussion so --</p> <p>11 Q. And this is an obvious answer, but I need to</p> <p>12 ask it anyway. You've reviewed Dr. Stein's report,</p> <p>13 correct?</p> <p>14 A. Correct.</p> <p>15 Q. Okay. I've previously labeled this Expert</p> <p>16 Exhibit No. 3. Could you review this, make sure that's</p> <p>17 the report you reviewed?</p> <p>18 A. Yes, that's the report I reviewed.</p> <p>19 Q. Make sure that's handy in case you need to</p> <p>20 refer to it.</p> <p>21 A. Okay.</p> <p>22 Q. So just generally first before we get into your</p> <p>23 specific points, do you disagree with any of the data</p> <p>24 that was used by Professor Stein in his expert opinion,</p> <p>25 the data itself?</p>	<p style="text-align: right;">Page 71</p> <p>1 what he did. So I guess it's not inconsistent with -- I</p> <p>2 don't think it demonstrates in an appropriate manner</p> <p>3 that there is legally significant racially polarized</p> <p>4 voting in SBISD, but it's a finding that certainly is</p> <p>5 not incompatible with that.</p> <p>6 Q. And it's not incompatible with the EI that you</p> <p>7 ran or the OLS that you ran previously, correct?</p> <p>8 A. I didn't -- nothing in it surprised me. I'll</p> <p>9 say that.</p> <p>10 Q. I understand. Do you agree that Bob Stein's</p> <p>11 expert report and the methods he used demonstrate</p> <p>12 racially polarized voting just generally?</p> <p>13 A. I don't know.</p> <p>14 Q. Okay.</p> <p>15 A. Again, it's not inconsistent with that, but I</p> <p>16 don't know that it actually demonstrates that.</p> <p>17 Q. I'm not talking as a legal matter. I'm talking</p> <p>18 only as a social scientific matter.</p> <p>19 A. I just don't know.</p> <p>20 Q. Okay.</p> <p>21 A. It's really hard to say. It's a -- it's a very</p> <p>22 scattered set of data, and it's a very unusual set of</p> <p>23 data. It's just hard to say what it demonstrates. I'm</p> <p>24 really not -- it's not clear to me what it demonstrates.</p> <p>25 Q. But you would agree that the slopes of the line</p>
<p style="text-align: right;">Page 70</p> <p>1 A. I don't have any reason to disagree with the</p> <p>2 election data, the results by election place. I -- I'm</p> <p>3 uncertain of what to make exactly of the BISG analysis.</p> <p>4 I'm not sure if I agree with it or don't agree with it.</p> <p>5 I may completely agree with it, and I may completely</p> <p>6 disagree, but I can't quite figure out -- there's sort</p> <p>7 of different forms of it that are being used there.</p> <p>8 It's not a hundred percent clear to me what the</p> <p>9 distinction is or how that's being utilized. But I --</p> <p>10 in terms of the -- how that leads the -- the voting</p> <p>11 places to be, roughly to be arrayed, to the extent I can</p> <p>12 see that, it's -- it's not obviously backwards or</p> <p>13 anything like that. I'm not sure that it's a -- it's a</p> <p>14 very precise way of measuring the proportion of Hispanic</p> <p>15 voters at the polls, but it doesn't -- to the extent I</p> <p>16 can see that pattern in the scatter plots it's not -- I</p> <p>17 don't think it's -- in its rough direction it's not</p> <p>18 incorrect. So it's -- in that sense I think it's</p> <p>19 accurate enough for the kind of analysis he did to</p> <p>20 reach -- reasonably, reliably reach a kind of narrow</p> <p>21 conclusion about this kind of mass of elections.</p> <p>22 Q. I understand. And it's not inconsistent with</p> <p>23 the OLS that you ran and the EI that you ran, correct?</p> <p>24 A. It's not inconsistent. It's not inconsistent</p> <p>25 with my view of what you would likely see if you did</p>	<p style="text-align: right;">Page 72</p> <p>1 are inverted, correct?</p> <p>2 A. Yes.</p> <p>3 Q. And that those slopes are generally consistent</p> <p>4 with racially polarized voting, correct?</p> <p>5 A. They're in the correct direction.</p> <p>6 Q. Okay. What is a p-value?</p> <p>7 A. A p-value typically is a -- it gives you a</p> <p>8 probability. So it's, you know, a probability that some</p> <p>9 value is, and in comparison to some null hypothesis,</p> <p>10 that it's, you know, within some appropriate range of</p> <p>11 that -- of that value. So, I mean, that's -- depending</p> <p>12 on what statistic you're talking about it's a -- you</p> <p>13 know, it's a probability.</p> <p>14 Q. Would a layperson call that statistical</p> <p>15 significance?</p> <p>16 A. They might. So p-value underlies what we call</p> <p>17 statistical significance, which requires a null</p> <p>18 hypothesis. It also underlies what you call a</p> <p>19 confidence interval. Sometimes people are more familiar</p> <p>20 with that.</p> <p>21 Q. Sure.</p> <p>22 A. That doesn't require a null hypothesis. That</p> <p>23 just talks about, you know, plus or minus around a --</p> <p>24 Q. Yeah.</p> <p>25 A. -- a predicted value.</p>

<p style="text-align: right;">Page 73</p> <p>1 Q. Would you agree that Dr. Stein's report shows 2 statistical significance, that his findings are 3 statistically significant? 4 A. He reports -- he reports a number that by 5 social science standards would typically indicate 6 statistical significance. 7 Q. A perfect answer. I appreciate that. 8 A. Okay. 9 Q. Okay. Do you agree with Professor Stein that 10 his findings show that voting is racially polarized in 11 SBISD elections? Do you agree? 12 A. No. 13 Q. Okay. Why don't you agree? 14 A. I just don't think it's -- well, for several 15 reasons. One is going back to the -- to the statistical 16 significance. OLS is not a technique, nor is 17 correlation that can generate an appropriate measure of 18 statistical significance for ecological analysis. 19 Q. Okay. 20 A. So that's a well-known -- that's going all the 21 way back to its very origins. Bernie Grofman has 22 written some articles about this. There just isn't an 23 appropriate method for deducing that from OLS with -- 24 with ecological data as opposed to with actual 25 individual level data. So we just have to be -- we can</p>	<p style="text-align: right;">Page 75</p> <p>1 another candidate. And then we're sort of over a span 2 of time and over a series of candidates we're -- we're 3 sort of putting all that together into one -- one giant 4 OLS analysis. And -- and we're not actually looking at 5 the cohesion for the preferred candidate or the voting 6 against the preferred candidate by the majority. The 7 candidate it's already been defined as the candidate 8 with a Hispanic surname. And that's just -- that's just 9 not the right way to do this. 10 Q. Okay. 11 A. I mean, it's important to have -- I think it's 12 important to include information about the ethnicity of 13 the candidates, particularly to have a mix -- it's 14 useful to have a mix of races that are ethnically 15 contested and races that aren't. But the -- ultimately 16 the issues is the -- is voting for the candidate 17 preferred by minorities, not for the assumption that 18 that's the candidate who is, in fact, an ethnic 19 minority, or in this case who has a minority surname but 20 may in fact not be of that ethnicity at all. 21 And so, again, I think that's -- it's not 22 to say that with all of that that this isn't compatible 23 with an analysis that would show -- show that done in 24 what I think is a more appropriate way, but in and of 25 itself it's also compatible with a lot of other things.</p>
<p style="text-align: right;">Page 74</p> <p>1 report -- it's not that OLS doesn't produce that 2 estimate. It's just that that estimate is not an actual 3 estimate given the nature of the data. And so it's -- 4 you can't rely on it in the sense that if it's, you 5 know, something significant to the 0.05 level, with -- 6 where that 0.05 estimate comes out of OLS it does not 7 mean that you would expect that result -- you know, that 8 you're in that 95 percent confidence interval or 9 whatever. That's just not true. There are lots of 10 studies that are looked at that said, you know, you can 11 do this kind of analysis, and it shows that, you know, 12 like 95 percent of the results are in fact nowhere near 13 the confidence interval. It just doesn't -- it 14 doesn't -- it's not mathematically correct, and it in 15 practice doesn't work. So we -- that part we don't -- 16 we don't know about, so we can't tell whether -- 17 whatever the pattern is here we can't tell whether it's 18 actually statistically significant or not. 19 We're also mixing data from a lot of 20 different elections, and within those elections a lot of 21 different conditions. So at least the best I can 22 understand it in some of these elections there is only 23 one candidate and -- and we're mixing sort of a vote for 24 the candidate with rolloff, or something, as a vote for 25 the noncandidate. It's not the same thing as voting for</p>	<p style="text-align: right;">Page 76</p> <p>1 So I just don't know what to -- it's not the way this is 2 usually done and I -- that doesn't -- you know, the way 3 things are usually done doesn't always mean it's the 4 right way or the best way or even a better way to do 5 things. But in this circumstance I think it attempts to 6 ask too much in a single analysis when a more discrete 7 analysis would solve almost all those problems and be a 8 clearer result. 9 Q. So if he did an ecological inference for each 10 of the races that would be preferential, that would be 11 what you preferred, and -- 12 A. Yes. 13 Q. -- that would solve the problems you -- 14 A. All those problems would be solved. If you 15 just do that for all the elections, you'll have 16 elections you'll be able to decide who the preferred 17 candidate is rather than assuming it. You'll then be 18 able to look and see was the preferred candidate almost 19 or always the minority candidate. That's a useful piece 20 of information in itself. You'll have reasonable 21 measures of statistical significance that are actually 22 valid. You know, all sorts of good. 23 Q. So if he did that we might be square, correct? 24 A. Of course I got to look at it. 25 Q. Yeah.</p>

<p style="text-align: right;">Page 77</p> <p>1 A. But, yes, that's -- I mean, that's really my -- 2 my primary criticism here of this is that -- that while 3 this method is compat -- could be compatible with it, it 4 could also be showing us something else, and that done 5 differently we would -- we would be able to deal with 6 the -- we'd be able to have a shared understanding of 7 the facts on the ground. And as it is I don't think 8 that that's really -- it's not clear enough yet in this 9 analysis.</p> <p>10 Q. I understand. And you also have two specifics 11 indicts, if I recall correctly. One is that you believe 12 he only surveyed specific races, correct?</p> <p>13 A. My understanding is that he said that he -- he 14 identified the preferred candidate as the minority, the 15 candidate with the Hispanic surname.</p> <p>16 Q. Let me just go to the part of your report where 17 you reference that, if you don't mind. I'm going to 18 take a moment. I think you said -- I think this is 19 on --</p> <p>20 A. Page 3.</p> <p>21 Q. Yeah. "Dr. Stein's analysis proceeds by 22 selecting only contests with at least one candidate with 23 a Hispanic surname." That's what you wrote, correct?</p> <p>24 A. Yeah, that was my understanding.</p> <p>25 Q. If he didn't do that, that wouldn't apply,</p>	<p style="text-align: right;">Page 79</p> <p>1 looked like fairly substantial correlation, you have to 2 get above 0.7 before you're even explaining half the 3 variance. And so if you're familiar with it and you use 4 it a lot, you know, you're capable of kind of making 5 that mental adjustment. But otherwise it tends to 6 suggest there's more here than there is.</p> <p>7 In this case the -- I think the correlation 8 is something like 0.33, which suggests that it's 9 accounting for about a third of the variation, when just 10 the -- you know, sort of the optical statistic, you can 11 look at this scatter plot, and it's clear that a third 12 of the variation has not been captured here. And, in 13 fact, that's where -- again, for ordinary least squares 14 the -- actually, the correlation is not really what 15 typically is reported for an ordinary least squares 16 regression. What's typically reported is the R-squared, 17 which is the coefficient that tells you what proportion 18 of the variation in the dependent variable explained by 19 variation in the independent variable. And that's 20 important here because that's really what we're -- we're 21 trying to understand -- you got a variation in the 22 proportion of voters at the precinct that are Anglo or a 23 proportion of voters at the precinct that are Hispanic, 24 and you want to know how much that variation is driving 25 the election results. And in this case it's driving</p>
<p style="text-align: right;">Page 78</p> <p>1 correct?</p> <p>2 A. Correct.</p> <p>3 Q. All right. Fair enough. And then we go -- you 4 go into I think a really interesting description of R 5 and R-square. That's the other specific indict you have 6 about Stein's report, correct?</p> <p>7 A. Yes.</p> <p>8 Q. Could you explain the R score and what that 9 means to the court, please?</p> <p>10 A. So R is a measure typically -- it's a 11 correlation measure. It's often called Pearson's 12 correlation, even though it wasn't actually developed by 13 Pearson but by Pearson's mentor. And it's a -- it's a 14 measure that varies between zero and one, with zero 15 being the absence of relationship between two variables 16 presumably at least semicontinuous, and at one a perfect 17 correspondence between the two measures. Unfortunately 18 in the area in between it's not a linear measure. It's 19 a curvilinear measure. And so it's really easy to be 20 deceived by that measure. So an R of 0.5 sounds like 21 you're halfway between zero and one, but in fact you're 22 not. An R of 0.5 corresponds to the independent 23 variable accounting for 25 percent of the variation in 24 the dependent variable. So through the early part of 25 that scale you're really, even when you get up to what</p>	<p style="text-align: right;">Page 80</p> <p>1 less than 12 percent of the election result, and 88 2 percent of this bouncing around is produced by something 3 else.</p> <p>4 Q. That's the claim in the report, and I think I 5 understand that.</p> <p>6 What level of R-square, if any, should lead 7 to a conclusion that any model is satisfactory? Is 8 there a specific level of R-square?</p> <p>9 A. No.</p> <p>10 Q. Okay.</p> <p>11 A. Well, I guess -- I mean, an R-square of zero -- 12 it depends on what you're -- what you want the model to 13 do.</p> <p>14 Q. A correlation. You want to prove a correlation 15 and --</p> <p>16 A. Oh, a correlation. There are all kinds of 17 scales of correlation that -- you know, some people say, 18 like in the social sciences, a -- you know, a 19 correlation of 0.2 is a pretty good correlation because 20 a lot of things we do have low correlation. You know, 21 that's true for a variety of reasons, not the least of 22 which is extremely poor measurement in the social 23 sciences but -- so in and of itself there's not -- 24 correlation is not -- it's not providing you a metric by 25 which you can judge the degree to which your independent</p>

20 (Pages 77 to 80)

<p style="text-align: right;">Page 81</p> <p>1 variable is -- is impacting the dependent variable. And 2 so it's -- it is very seldom used in the OLS context 3 because -- because OLS produces instead the summary 4 statistic, the R-squared.</p> <p>5 Q. I think I understand. What are some of the 6 factors that might explain the variance in R-square on 7 this model?</p> <p>8 A. So I think one of the things that probably 9 explains the low R-squared is that you've thrown 10 together -- your data points are not really discrete 11 data points from an event. They're a set of data points 12 from a whole bunch of events. They're at different 13 points in time. So normally if we're looking -- again, 14 if we're looking at a single election, then we could 15 say, you know, whatever the proportion of explained 16 variance is that's how much this variable is explaining 17 about what happened in this election. When you compound 18 this by throwing a bunch of elections together, you've 19 got -- some of this trends over time, and some of this, 20 the very different nature of these elections. Some of 21 these elections are competitive. Some of them are not 22 at all competitive. In a noncompetitive election you're 23 not -- this is not going to explain much in a 24 noncompetitive election because everybody is going to be 25 voting the same way. In a competitive election, it may</p>	<p style="text-align: right;">Page 83</p> <p>1 A. It doesn't -- it solves part of the problem. 2 Again, it unbundles the characteristics of the election, 3 so you don't -- in trying to analyze what happened in 4 2020 you're not stuck with the variance that came from, 5 you know, 2015 when somebody ran unopposed and somebody 6 was an incumbent, whatever. You still have the issues 7 that are germane to that election. But in exactly the 8 form you're suggesting you can look at those and say, 9 you know, it's more predictive in this election than 10 this election, why might that be, and you can talk about 11 the characteristics of that election. It's really hard 12 to do that when the election itself is -- it's almost 13 hard to find where the particular elections are in here 14 because they're kind of all over the place.</p> <p>15 Q. I understand. That's reasonable. So how about 16 this? Is having a high R-square always good?</p> <p>17 A. I don't know. I guess I'm tempted to think 18 that in social sciences you -- it's like a higher -- 19 it's like you can't be too rich or too thin. Right? 20 Can you have -- can you have too high in R-squared? I 21 don't think it's -- certainly there are equations with 22 high R-squareds that are less useful than ones with low 23 R-squareds because it depends on what it is you're 24 measuring. Right? There's an old joke about if you 25 measure the same thing twice, right, you'll get a high</p>
<p style="text-align: right;">Page 82</p> <p>1 actually be more useful. By separating out the 2 elections you separate out the context. Right? You can 3 say, look, it's really explanatory here. Over here in 4 this election where there was like just a write-in 5 candidate it doesn't explain much, but we wouldn't 6 expect it to explain much. So part of the -- part of 7 the issue here is just there's an artificial increase in 8 the amount of variance that needs to be explained, and 9 that's not a necessary -- that's a choice of putting it 10 all in -- in one picture instead of pulling it out 11 separately.</p> <p>12 Q. I think I understand. But as we're sitting 13 here today you can't explain the variance, what causes 14 the variance here in this R-square, correct? It could 15 be incumbency? It could be issues in the campaign like 16 you said? It could be ballot drift? It could be any of 17 those things, correct?</p> <p>18 A. It's -- it can be a host of factors. All you 19 can say is that whatever those factors are they're more 20 influential, substantially more influential than is the 21 question of what's the racial composition of the 22 precinct.</p> <p>23 Q. And to be the clear, if he did an EI analysis 24 election by election that solves his problem for you, 25 correct?</p>	<p style="text-align: right;">Page 84</p> <p>1 R-squared, except in the social sciences where even if 2 you measure the same thing twice you don't get a high 3 R-squared because measure and error, et cetera, et 4 cetera, et cetera. So it's a -- it's an indicator of 5 the completeness of the model. Among other things 6 it's -- it's cautionary I think. A low R-squared is 7 cautionary in the sense that, you know, you need to -- 8 you need to pay some attention. It can be humbling in 9 the sense of what you're explaining. It can be 10 challenging in the sense that you know that there's 11 other things to take into account.</p> <p>12 It can also reveal that your model is 13 underspecified, so it -- and specification is not just 14 an issue of -- one of the things you can't do is just 15 ignore the fact that the model has a low R-squared, in 16 the sense that your certainty about what's in -- about 17 the parameters in the model is partly a function of what 18 you left out of the model. And if the model is 19 improperly specified, which is often the case with low 20 R-squared models, then a properly specified model may 21 produce a different result. So you point out 22 incumbency. It's possible that if you bring incumbency 23 in as a variable that this correlation will diminish. 24 It's control variables because of specification error. 25 Bringing in the right specification can diminish,</p>

<p style="text-align: right;">Page 85</p> <p>1 sometimes can reverse correlation. So it's -- it is --</p> <p>2 it's not always better to have a higher R-squared. But</p> <p>3 certainly a low R-squared signals -- should make you</p> <p>4 cautious about overinterpreting the one parameter you've</p> <p>5 estimated because you really -- you don't have a full</p> <p>6 model that let's you estimate that parameter.</p> <p>7 Q. Is R-squared a biased estimator in the term,</p> <p>8 whatever that means, the -- the statistics?</p> <p>9 A. Well, it's -- to the extent that you have met</p> <p>10 the basic requirements for OLS then the R-squared, like</p> <p>11 the estimates of the parameters, are linear, unbiased</p> <p>12 estimators. They're -- and to the extent you violate</p> <p>13 assumptions the -- the nice thing about OLS, one of the</p> <p>14 many, many nice things about OLS, is that even when you</p> <p>15 violate assumptions it tends to have more impact on</p> <p>16 efficiency than it does on bias. So the estimator is</p> <p>17 often linear -- OLS estimates, even when you violate a</p> <p>18 condition that causes them not to be the most efficient</p> <p>19 estimator, they're often surprisingly robust with regard</p> <p>20 to bias. So, you know, in the -- in the context of</p> <p>21 social science estimation the -- you know, R-squared</p> <p>22 is -- is a relatively reliable indication of how good a</p> <p>23 job you're doing of accounting for variation.</p> <p>24 Q. Could a high R-Square score be a symptom of</p> <p>25 overfitting your best fit line?</p>	<p style="text-align: right;">Page 87</p> <p>1 A. There's -- I mean, there is only one</p> <p>2 independent variable so --</p> <p>3 Q. Right.</p> <p>4 A. But the adjusted R-squared just accounts for</p> <p>5 the fact that you've got, you know, multiple independent</p> <p>6 variables. And it produces a result as you get close to</p> <p>7 reaching a level where your number of variables is close</p> <p>8 to the number of cases. But the R-squared, adjusted</p> <p>9 R-squared are not going to be very different here.</p> <p>10 Q. On page 5 of your report, sir, you say -- if</p> <p>11 you want to turn to that page, I just want to make sure</p> <p>12 I'm quoting you correctly -- "Taken together, the issues</p> <p>13 identified above suggest that the evidence relating to</p> <p>14 Gingles 2 and Gingles 3 provided in Dr. Stein's report</p> <p>15 are not sufficient to meet the plaintiff's burden of</p> <p>16 proof on these two threshold conditions, or the broader</p> <p>17 totality of the circumstances." Is that what you wrote,</p> <p>18 sir?</p> <p>19 A. Yes.</p> <p>20 Q. Okay. And I'm not trying to get horsey with</p> <p>21 you. I think I -- you know I have enormous respect for</p> <p>22 you, but I want to be clear about a couple of things.</p> <p>23 You're not an attorney, correct?</p> <p>24 A. Correct.</p> <p>25 Q. And you've never done a survey of burdens of</p>
<p style="text-align: right;">Page 86</p> <p>1 A. Absolutely.</p> <p>2 Q. Yeah.</p> <p>3 A. It's -- you know, as the number of independent</p> <p>4 variables approaches the number of data points you will,</p> <p>5 you know, by definition have one less parameter than you</p> <p>6 have data points. You will perfectly fit your -- fit</p> <p>7 your line. So in and of itself it's not -- you can --</p> <p>8 you can produce the high R-squared trivially. On the</p> <p>9 other hand, I'm not sure that you can produce a low</p> <p>10 R-squared trivially. I think that really does tell</p> <p>11 you that -- again, it's not -- in and of itself it</p> <p>12 doesn't -- it doesn't say you haven't learned anything.</p> <p>13 It is a -- it is an appropriate caution I think in this</p> <p>14 kind of modeling, and I think a -- and I think a very</p> <p>15 valid one because I think one of the things it tells you</p> <p>16 is this is not the right way to do this analysis. Or I</p> <p>17 wouldn't say "not the right." Not the best -- not the</p> <p>18 best way, not the most informative way to do this</p> <p>19 analysis.</p> <p>20 Q. I understand. When you analyzed Professor</p> <p>21 Stein's report, I just want to be clear for the record,</p> <p>22 you used normal R-squared, not R-squared adjusted,</p> <p>23 correct?</p> <p>24 A. Correct.</p> <p>25 Q. Okay.</p>	<p style="text-align: right;">Page 88</p> <p>1 proof or sufficiency of evidence, correct?</p> <p>2 A. Correct.</p> <p>3 Q. And while you have extensive background in</p> <p>4 testifying you have no background in what sufficient</p> <p>5 evidence is for a judge, correct?</p> <p>6 A. Correct.</p> <p>7 Q. Okay. In the final part of your report you</p> <p>8 cite I think this -- this report from Abott and</p> <p>9 Magazinnik; is that correct?</p> <p>10 A. Yes.</p> <p>11 Q. Okay. I'm going to hand it to you. I've</p> <p>12 labeled this Exhibit 5. We're out of order. I</p> <p>13 apologize. But I just did it incorrectly.</p> <p>14 Could you review this and make sure this is</p> <p>15 the right article?</p> <p>16 A. I think this is right.</p> <p>17 Q. And so in the final part of your report you</p> <p>18 caution us based on this article that the use of</p> <p>19 single-member districts may actually be worse for</p> <p>20 Latinos in some communities, correct?</p> <p>21 A. Correct.</p> <p>22 Q. And that's based largely on the data for these</p> <p>23 California elections that are analyzed by Abott and</p> <p>24 Magazinnik, correct?</p> <p>25 A. It's -- as they cite, they're unlike the</p>

<p style="text-align: right;">Page 89</p> <p>1 literature on single-member districts and black 2 representation. There's long been controversy about 3 whether that same relationship was present for Latino 4 voters sometimes in earlier studies, sometimes in 5 different locals. So they're really addressing what's 6 kind of been a mixed set of findings in the past, I 7 guess a much more -- a much less certain area of the 8 literature than would be the case for the value of 9 single-member districts in providing for increased black 10 representation.</p> <p>11 Q. Okay. That's in relation to the Latinos you 12 mean, correct?</p> <p>13 A. Correct.</p> <p>14 Q. All right. And I think in your report you 15 posit that in highly segregated areas with low vote 16 participation by Latinos single-member districts may not 17 lead to more representation. That's what you posit, 18 correct?</p> <p>19 A. I'm not -- I'm not positing that.</p> <p>20 Q. Okay. You're just recording that?</p> <p>21 A. So -- yeah. And particularly -- so this is -- 22 I don't cite these -- I've never cited this paper in a 23 report before. I'm citing it only because when 24 Dr. Stein laid out kind of his three areas of evidence 25 he suggested that this was part of what he was advancing</p>	<p style="text-align: right;">Page 91</p> <p>1 to it. It's on the -- it looks like the second full 2 paragraph. It's the second sentence. It starts with -- 3 A. Yes.</p> <p>4 Q. -- "Spanish Surname Registered Voters (SSRV) 5 make up less than 20 percent of the registered voters in 6 Spring Branch ISD, and in the most recent school board 7 elections that included the Position 4 Elizondo - 8 Earnest contest, Spanish Surname Registered Voters made 9 up less than six percent of the actual election day 10 Spring Branch voters." Correct?</p> <p>11 A. Correct.</p> <p>12 Q. And then you draw similarity, is it fair to 13 say, between the article's use of voter eligible 14 population and SSR -- SSVR, correct?</p> <p>15 A. Correct.</p> <p>16 Q. But isn't it true that -- how about this? How 17 does Abbott and Magazinnik define voter eligible 18 population in their article?</p> <p>19 A. I believe they're using -- I don't know if 20 they're using VAP or CVAP. I don't recall.</p> <p>21 Q. All right. Let's take a look at the article so 22 we're not -- I think it's on -- it's on Figure 4. I 23 think this is page -- let's see. Here's the exhibit. 24 One second. Let me find it for you. I apologize. I 25 should have put the page number here, and I thought that</p>
<p style="text-align: right;">Page 90</p> <p>1 in the report, and it's his citation to their work that 2 I'm referencing. So what I'm just providing is sort of 3 some context for his discussion of their -- of their 4 report. I think it -- their -- what their conclusion 5 that I quote indicates is that they see there's reason 6 in some areas to be cautious because the effect is not 7 going to be -- in their view is not going to be 8 uniformly positive. It may just be -- it may be 9 neutral. It may be negative. And, again, I think that 10 just provides some context for what Dr. Stein is saying 11 here. It's not something I'm saying. It's just, I 12 think, is a little bit of a corrective to what he's 13 saying they're saying.</p> <p>14 Q. Okay. So you're not going to testify about it? 15 This is not something you're saying you will testify 16 about?</p> <p>17 A. I mean, if I'm asked about it, I would testify 18 about it.</p> <p>19 Q. All right.</p> <p>20 A. I don't get to control that.</p> <p>21 Q. I'm going to need to delve into it just a 22 little bit, then, if you don't mind.</p> <p>23 A. Yeah. Absolutely.</p> <p>24 Q. In this -- on the report on page 7, you say the 25 following: "Spanish Surname Registered" -- I guess turn</p>	<p style="text-align: right;">Page 92</p> <p>1 I had.</p> <p>2 MR. ABRAMS: Figure 4 is on page 22.</p> <p>3 MR. GOLANDO: Twenty-two. Okay.</p> <p>4 Q. (BY MR. GOLANDO) On page 22, sir, here, I 5 believe the discussion -- so I think it's on page 21.</p> <p>6 MR. ABRAMS: The text begins on page 21 at 7 the bottom.</p> <p>8 MR. GOLANDO: Yeah.</p> <p>9 Q. (BY MR. GOLANDO) So here it is. How are they 10 defining -- what is your understanding of how they are 11 defining voter eligible population?</p> <p>12 A. So they -- it looks like they're defining it as 13 CVAP or H -- I guess Latino CVAP or Hispanic CVAP.</p> <p>14 Q. So HCVAP and VEP are the same thing here, 15 correct?</p> <p>16 A. Yes.</p> <p>17 Q. And would you agree with me that SSVR and HCVAP 18 are different measures?</p> <p>19 A. Yes.</p> <p>20 Q. And SSVR is a lower measure often done, or has 21 to be --</p> <p>22 A. Well, one hopes.</p> <p>23 Q. One would hope so.</p> <p>24 A. Not always in Texas or Louisiana. But, yes, it 25 should be a subset of CVAP.</p>

<p style="text-align: right;">Page 93</p> <p>1 Q. And in SBISD it is absolutely a subset of 2 HCVAP, correct? 3 A. It is lower than CVAP, yes. 4 Q. And so HCVAP is likely to be far higher in 5 SBISD than SSVR, correct? 6 A. It is higher. 7 Q. I think I got the adjective. It's higher? 8 A. Yeah, it's higher. It's -- it's significantly 9 higher. So it's not just marginally higher. It's 10 significantly higher. 11 Q. Okay. 12 A. Yes. 13 Q. And so in the article itself on page 22 -- 14 let's pull it up for you again -- there are a couple of 15 different graphs. If you'll look at Figure 5, I 16 believe, it says -- in the article it says "there is a 17 dramatically" -- "dramatic and precisely estimated 18 positive effect in large districts that are composed of 19 at least 30 percent Latinos." That's Figure 5. What 20 does that mean exactly? 21 A. That means that there's -- there's an upward 22 slope when they constrain or confine the population for 23 the figure to that set of districts. 24 Q. How does the -- what is the definition of a 25 large district in this article?</p>	<p style="text-align: right;">Page 95</p> <p>1 Q. How many have been appointed? 2 A. I don't know. 3 Q. And would you be surprised it was zero? 4 A. No. 5 Q. Okay. The fact that the voter eligible 6 population is north of 20 percent and that SBISD is a 7 large school district, does that change your opinion of 8 whether or not single-member districts might be a better 9 fit given this article? 10 A. I guess I'm -- I'm going on what they say, 11 which is "increasingly racially polarized voting coupled 12 with small numbers of Latino voters relative to other 13 groups-may create new barriers." And so they're 14 actually talking about the small number of voters, so I 15 guess -- I don't know how eligible is translating into 16 voters in California, but eligible is not translating 17 into voters here. And so in the sense that their 18 concern is about what happens when you have a small 19 number of Hispanic voters in an increasingly polarized, 20 politicized environment as a result of issues related to 21 change in the nature of elections, they offer a caution 22 about that that I think is -- continue to believe is 23 precisely correct for SBISD. 24 Q. But right now you would agree with me that 25 there's zero chance that a Latino preferred candidate</p>
<p style="text-align: right;">Page 94</p> <p>1 A. You mean a district with a large Latino 2 population? 3 Q. I think they actually do it by enrollment, if 4 I'm not mistaken. Maybe here is the -- so small 5 districts -- so how does the article define a small 6 district? 7 A. Enrollment of less than 13,700. 8 Q. And how does it define a large district? 9 A. Larger than 13,700. 10 Q. And how many students does SBISD enroll? 11 A. I have no clue. 12 Q. Is it higher than 13,000? 13 A. I would think so. 14 Q. It's probably a large -- 15 A. It's a big district. Yeah. 16 Q. Fair enough. How many Latinos have been 17 elected to the school board in SBISD's history? 18 A. I don't know. 19 Q. Would you be surprised to hear there was zero? 20 A. I wouldn't be surprised, no. 21 Q. And how many African Americans have been 22 elected in SBISD's history? 23 A. I don't know. 24 Q. Would you be surprised if it was zero? 25 A. No.</p>	<p style="text-align: right;">Page 96</p> <p>1 can be elected today, correct? 2 A. I didn't know you thought that, and I don't 3 agree with it. 4 Q. Okay. Let's just go historically. 5 Historically the minority preferred candidate has not 6 been elected, correct? 7 A. I don't know that that's correct. I don't 8 believe it's correct. 9 Q. Fair enough. You said before that you believe 10 that the Latino candidate is usually the Latino surname 11 candidate, correct? 12 A. I said I thought it's probably the case that 13 when -- yes. So if there's a Latino -- a candidate that 14 is Latino I think they probably would usually be the 15 preferred candidate of Latinos, yes. 16 Q. And it's -- you were not surprised to learn 17 that no Latino has ever been elected to the school 18 board -- 19 A. Yes. 20 Q. -- in SBISD, correct? 21 A. (Moving head up and down.) 22 Q. So the Latino preferred candidate in SBISD 23 elections has never been elected in SBISD, correct? 24 MR. CRAWFORD: Objection, form. 25 A. No. That's -- most of the elections to SBISD</p>

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1 board have not included Latino candidates, and so in --
 2 I assume in many of those elections the --
 3 **Q. (BY MR. GOLANDO) Fair enough.**
 4 A. -- Latino preferred candidate was elected. So
 5 a Latino that was the preferred Latino candidate, if --
 6 and I'm just accepting your assertion that no Latino has
 7 ever been elected. If it's true that no Latino has ever
 8 been elected, then the Latino candidates that were also
 9 the preferred candidate of Latino voters, which is a
 10 subset, has not been elected.
 11 **Q. And that's -- that's a much better way to say**
 12 **that.**
 13 A. Okay.
 14 **Q. And you agree with that, correct?**
 15 A. I agree with that.
 16 **Q. All right. So the chance -- okay. Fair**
 17 **enough. I think I understand.**
 18 **Did you review Professor Stein's proposed**
 19 **single-member district plan in his report?**
 20 A. I looked at it. One of the things that I was
 21 clear about in the sort of scope of what I was going to
 22 do and the amount of time I had to do it was that I was
 23 going to stay out of being a demographer.
 24 **Q. I understand.**
 25 A. So I did not do any -- I looked at it. I

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1 recognized what it was. It's a -- a modified version of
 2 the -- he says basically the polling places. It isn't.
 3 **Q. No.**
 4 A. It's a -- I mean, that obviously -- you know, a
 5 quick look at the population deviation will tell you
 6 that -- you know, nobody gets the population perfect in
 7 an attendance district because there it's about
 8 students, not about people. So -- but it obviously is
 9 based on -- the cores of the districts are the
 10 recognizable cores of the -- of the current polling
 11 places are, which would be the attendance districts,
 12 with some modifications to -- you know, to get the
 13 population equal. So that's what I saw there. It looks
 14 like the area that he says is the district that's CVAP
 15 majority is an area where I would suspect there's a --
 16 it could be you could draw a CVAP majority district
 17 so --
 18 **Q. Does anything about that district give you**
 19 **pause as a map drawer? Because you've done that in the**
 20 **past, correct?**
 21 MR. GOLANDO: Actually, strike that. Let
 22 me just do it correctly.
 23 **Q. (BY MR. GOLANDO) Historically you've drawn**
 24 **maps for jurisdictions, right?**
 25 A. Yes.

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1 **Q. All right. So you have a vast history of**
 2 **drawing maps, correct?**
 3 A. I've drawn a lot. I wouldn't say vast.
 4 **Q. Okay.**
 5 A. But I've drawn a lot of school district maps,
 6 yes.
 7 **Q. Fair enough. Does anything about that, the way**
 8 **it's shaped geometrically, give you pause?**
 9 A. No.
 10 **Q. Would you agree that it's a compact district?**
 11 A. Yes.
 12 **Q. Okay. Would you agree that if the numbers are**
 13 **correct that it's CVAP majority?**
 14 A. Yes.
 15 **Q. Would you agree that that map meets Gingles 1?**
 16 MR. CRAWFORD: Objection, exceeds the scope
 17 of his engagement and his opinion.
 18 **Q. (BY MR. GOLANDO) But as an expert in map**
 19 **drawing I'm asking and as -- and one who's drawn several**
 20 **Gingles 1 maps does it meet the form of Gingles 1?**
 21 A. Again, I -- so I haven't looked at any of this,
 22 so I'm going entirely on your assertion that the numbers
 23 that were provided match the numbers that -- the
 24 picture. Right? And I have no idea whether that -- you
 25 know, whether that picture actually produces the numbers

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1 or not but --
 2 **Q. Sure.**
 3 A. -- if that picture produces those numbers, and
 4 that's the most current CVAP estimate, then I'd say
 5 that's what you'd be looking for in a -- you know, in a
 6 district to establish Gingles 1.
 7 **Q. So yes?**
 8 MR. CRAWFORD: Same objection.
 9 A. Yes.
 10 **Q. (BY MR. GOLANDO) Thank you, sir. All right.**
 11 **Only about nine more pages.**
 12 **Is the Latino community in SBISD**
 13 **sufficiently large and geographically compact to**
 14 **constitute a majority in a single-member district?**
 15 A. I don't know.
 16 **Q. In your experience? You've drawn maps.**
 17 A. I don't know.
 18 **Q. And you've reviewed election analyses, and you**
 19 **know SBISD well. You've worked here for 20 years.**
 20 **In your opinion, given your broad history**
 21 **of working with SBISD, do you think it's sufficiently**
 22 **large and geographically compact?**
 23 MR. CRAWFORD: Object to the extent it --
 24 A. I mean, I don't have --
 25 MR. CRAWFORD: -- exceeds the scope of his

25 (Pages 97 to 100)

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1 opinion.

2 A. I don't have an expert opinion about that.

3 **Q. (BY MR. GOLANDO) How about just a lay opinion,**
4 **then?**

5 A. A lay opinion? It wouldn't surprise me. I
6 guess that's one of our -- that's one of our answers. I
7 wouldn't be surprised if that was true, but I haven't --
8 I have not at any time trying to draw -- tried to draw a
9 district. So, you know, I don't have any -- I don't
10 have any information to add to this beyond what is in
11 Dr. Stein's report, but it wouldn't surprise me.

12 **Q. Based on your years of experience in data**
13 **reviewed for SBISD are Latinos generally politically**
14 **cohesive in SBISD elections?**

15 A. Again, it's -- you know --

16 **Q. It's a range?**

17 A. It just depends. It's a range. And they're
18 certainly not in the -- not cohesive at the levels that
19 we would traditionally see for black voters.

20 **Q. And that would be 90 percent and above,**
21 **correct?**

22 A. Yes.

23 **Q. Okay.**

24 A. And I'm not sure even -- if it would even be
25 cohesive at the level you would normally see in a

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1 **collected and your experience in SBISD. Do you recall**
2 **whether or not Latino voters in SBISD elections support**
3 **different candidates than Anglo voters generally?**

4 A. I guess I'm not clear on -- I mean, you're
5 asking me about the results of the analysis that I
6 provided the attorneys, so I'm not sure -- is this
7 like -- are we back in the realm of what's acceptable
8 here or --

9 **Q. I'm asking you just based on your experience.**
10 **It's a question about do you believe them to be so based**
11 **on the entirety of your experience here?**

12 MR. CRAWFORD: And based on Dr. Alford's
13 interpretation of the question I think it would call for
14 protected communications, and so I'll instruct you not
15 to answer.

16 **Q. (BY MR. GOLANDO) You can answer if you want.**

17 A. I've been instructed not to answer --

18 **Q. Fair enough.**

19 A. -- by my employer.

20 **Q. I think we've asked that question before.**

21 **In your opinion based on your years of**
22 **experience at SBISD, does the Anglo majority vote**
23 **sufficiently as a bloc to enable it to defeat the**
24 **minority preferred candidate?**

25 A. I would say sometimes.

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1 general election. So there's some -- again, there's
2 modest to moderate cohesion.

3 **Q. Based on your years of experience as an**
4 **election analyst and demography expert, in the data**
5 **reviewed for SBISD historically, not just for this case,**
6 **but historically are Anglos politically cohesive in**
7 **SBISD elections generally?**

8 A. Moderately I'd say. I mean, it's -- it varies
9 from election to election. But, yeah, it's a --
10 probably -- probably somewhere in that same range, but
11 I don't really know.

12 **Q. Based on your years of experience and the data**
13 **reviewed for SBISD do Latino voters in SBISD elections**
14 **support different candidates than Anglo voters in SBISD?**

15 A. I have not -- I don't know. Comprehensively I
16 don't know.

17 **Q. You did an EI report, correct?**

18 A. The what?

19 **Q. You did an EI before the litigation began?**

20 A. Yes.

21 **Q. Okay. And you recall the contents of that EI**
22 **report, correct?**

23 A. I do.

24 **Q. And I'm asking you to call into that based --**
25 **based on your expertise and your -- the data you've**

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1 **Q. How often?**

2 A. I don't know.

3 **Q. More often than not?**

4 A. I don't know.

5 **Q. Does Texas have a history of official**
6 **discrimination in the jurisdiction in SBISD that**
7 **affected the right to vote? Does Texas have it?**

8 A. Now we're -- we're not just outside of my
9 expertise on this case. We're just --

10 **Q. Yeah. I'm just trying to limit your testimony.**
11 **I just want to make sure you're not going to testifying**
12 **in totality. So if you don't have an opinion that's**
13 **great. You can just say "no."**

14 A. Yeah, I don't have an opinion.

15 **Q. Okay. Does Harris County?**

16 A. I don't have an opinion. I don't have an
17 expert opinion.

18 **Q. Does SBISD?**

19 A. I have no idea.

20 **Q. Does SBISD use the place system for voting?**

21 A. It's my understanding they do.

22 **Q. Okay. Have minority candidates been denied**
23 **access to the jurisdiction's candidate slating process**
24 **formally or informally to your knowledge?**

25 A. I don't know anything about the slating

26 (Pages 101 to 104)

<p style="text-align: right;">Page 105</p> <p>1 process, if there is one.</p> <p>2 Q. Are SBISD minorities discriminated against in</p> <p>3 socioeconomic areas such as education, employment, or</p> <p>4 health?</p> <p>5 A. I don't know.</p> <p>6 Q. Have there been overt or subtle racial appeals</p> <p>7 in campaigns in SBISD elections?</p> <p>8 A. I don't know.</p> <p>9 Q. Okay. Has a minority ever won an election in</p> <p>10 SBISD to your knowledge?</p> <p>11 A. I don't know.</p> <p>12 Q. Okay. Are elected officials -- are the SBISD</p> <p>13 trustees responsive to the concerns of minority voters</p> <p>14 in SBISD? Do you have an opinion?</p> <p>15 A. My opinion, yes, I think they are.</p> <p>16 Q. What is that based on?</p> <p>17 A. Just on -- you know, the degree -- sort of my</p> <p>18 sort of nonexpert kind of information you get from</p> <p>19 reading the paper sort of thing, that certainly</p> <p>20 there's -- you know, the district floats bonds and</p> <p>21 builds facilities in a variety of areas. Like most</p> <p>22 districts they run a -- you know, the bilingual</p> <p>23 education program. They have programs that are designed</p> <p>24 to, you know, help students, early start kinds of</p> <p>25 things, whatever. So that's just -- my sense is the</p>	<p style="text-align: right;">Page 107</p> <p>1 at the individual level, but you're not getting the data</p> <p>2 at the individual level. You're getting it at some</p> <p>3 level of aggregation. So, for example, I could do a</p> <p>4 study of counties in the United States based on the --</p> <p>5 what proportion of the county is male and female, and</p> <p>6 then look at Republican, Democratic voting, and try to</p> <p>7 draw a conclusion about the effect of gender on</p> <p>8 Republican or Democratic voting. And that's the</p> <p>9 ecological fallacy, right, that -- that once aggregated</p> <p>10 that the variation across those aggregations is</p> <p>11 disclosing simply the same variation that's taking place</p> <p>12 across individuals. It's not necessarily the case that</p> <p>13 that's happening.</p> <p>14 Q. Okay. So as I learned it -- this is very --</p> <p>15 this is like Science 101, right -- it's when you infer</p> <p>16 individual behavior from aggregated measurements. Is</p> <p>17 that fair?</p> <p>18 A. Yes.</p> <p>19 Q. Okay. So ecological regression describes a</p> <p>20 voting behavior between certain relationships, right?</p> <p>21 A. Correct.</p> <p>22 Q. Okay. But you can't infer the intent of the</p> <p>23 voter, correct?</p> <p>24 A. It doesn't measure the intent of the voter.</p> <p>25 People infer the intent all the time.</p>
<p style="text-align: right;">Page 106</p> <p>1 district has a reputation as a district that has, you</p> <p>2 know, made a variety of efforts, provided resources and</p> <p>3 expertise directed toward -- toward minority students.</p> <p>4 Q. Will you be testifying about that?</p> <p>5 A. I don't think so. It's not an area in my</p> <p>6 report. It's not my area -- I mean, that's -- again,</p> <p>7 that's a -- you can have a sense about that, and then</p> <p>8 there's empirical information about it. I don't have</p> <p>9 the empirical information and it's not an area that I do</p> <p>10 work in so I don't testify about it.</p> <p>11 Q. Fair enough. We're entering the last stages,</p> <p>12 the -- my category of this is fun stuff, so I hope this</p> <p>13 is enjoyable for you. It will be for me.</p> <p>14 My first question to you actually is what</p> <p>15 is the ecological fallacy?</p> <p>16 A. So the ecological -- normally you gather data</p> <p>17 at the level that you want to ask or answer a question.</p> <p>18 So if I want to know what effect people's gender has on</p> <p>19 how they vote I would -- because that's a question in</p> <p>20 which the unit of analysis of the question is an</p> <p>21 individual person then the unit of analysis for my study</p> <p>22 should be people. So I would ask people about their</p> <p>23 gender, and I would ask them about how they vote. And</p> <p>24 that would be a normal analysis. An ecological analysis</p> <p>25 is one where your -- your question -- you want an answer</p>	<p style="text-align: right;">Page 108</p> <p>1 Q. For sure. Right.</p> <p>2 A. But, no, you don't have -- you're not measuring</p> <p>3 the voter's intent, although it's true in any research</p> <p>4 scheme you have a variety of tools that help -- can help</p> <p>5 you to eliminate certain possibilities or to make</p> <p>6 certain things more likely than not. So I'm going to</p> <p>7 give you an example in a partisan general election. If</p> <p>8 you find that -- as I talked about earlier, if you find</p> <p>9 that when the Republican candidate is a Hispanic,</p> <p>10 Hispanics vote against that candidate when -- when the</p> <p>11 candidate is Anglo. So what you see there then is a</p> <p>12 pattern, that the changes in the partisanship of the</p> <p>13 candidate drives voting, but the changes in the</p> <p>14 ethnicity candidate doesn't drive the voting. That's</p> <p>15 sufficient -- not that you would know that from any one</p> <p>16 analysis, but that's sufficient to suggest that given</p> <p>17 that you've added this other condition that the behavior</p> <p>18 of the voters, whatever their intention, their behavior</p> <p>19 is not being driven by the signal that they're getting,</p> <p>20 right, because you've separated two signals, signal</p> <p>21 about the candidate and party, and signal about the</p> <p>22 candidate and ethnicity. And where you can separate</p> <p>23 those you can see whether it's a mix of those or whether</p> <p>24 it's mostly one or mostly the other or neither.</p> <p>25 Q. So you infer the intent of the voter by</p>

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1 subtraction almost, correct?

2 A. You still don't infer the intent. I'm very
3 uncomfortable with intent analysis in all of its forms.
4 I don't believe people have intent quite frankly. It
5 requires that people have a unified personality, that
6 people have -- that people's brain is -- that part of
7 the brain that actually makes decisions is entirely in
8 control, and therefore the -- I mean, I think just the
9 idea that -- I mean, there's a lot more than just
10 unintended consequences. There are just completely
11 unintended actions as well. So even talking about
12 intent at the individual level where you have the most
13 chance of it making sense I'm not comfortable with it.
14 We certainly don't have tools for teasing that out. And
15 then, of course, when you get to collective bodies my
16 favorite is the intent of the legislature. Anybody who
17 has ever been near a legislature knows the idea, as you
18 well know, that the legislature itself generates an
19 intent, it's like forget about the -- I mean, the
20 individual legislators could barely figure out what
21 their intent is on a good day. Collectively Lord only
22 knows what's going on but --

23 **Q. Yeah. I think voters are pretty irrational, I**
24 **think legislators are definitely irrational, in policy**
25 **meetings pretty irrational, right? I understand.**

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1 A. And collectively whatever we're guilty of as
2 individuals put -- put us in groups of two, in groups of
3 four, in groups of eight, in groups of twelve, and then
4 talk about the outcome of that irrationality when it
5 gets aggregated. And I think it's really -- it's not
6 just difficult. I just don't think it's -- that there's
7 a value to it. So I don't think it's valuable to talk
8 about the intent of the -- to the intent of the voters.
9 I think it's valuable to talk about -- certainly it's
10 valuable to talk about what the cue is the voters are
11 responding to. And this is a context where that's
12 really important. If the -- if voters are responding to
13 a cue of ethnicity, then that tells you something about
14 the behavior. And if they're not, it tells you
15 something about their behavior and --

16 **Q. And we would know that they were responding to**
17 **a cue about their ethnicity in this case if we ran an EI**
18 **and there was cohesion for Latino voters and cohesion**
19 **for Anglo voter candidates, correct?**

20 A. No.

21 **Q. How would we know, I guess is more or less --**

22 A. Okay. So that -- we can certainly
23 distinguish -- again, you need an analysis that brings
24 in some other factors so that you can tell whether
25 that's the factor that's explaining it or the cue. Just

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1 as if you don't bring in partisanship you can't tell the
2 difference in the -- you know, in a general analysis.
3 So if you -- I mean, you can look at -- you can vary
4 things like, you know, the location of voters within the
5 district. You can vary things about, you know, the
6 voters' opinions and so forth. So there are a lot of
7 other things you can look at that -- you know, that
8 would allow you to at least get some sense of how
9 powerful or durable or influential any particular
10 characteristic is.

11 **Q. Okay.**

12 A. But I still think it's -- it's not really --
13 it's not really about intent. It's about -- it's about
14 the behavior rather than the internal process.

15 **Q. Do you believe that there is a link between**
16 **biology and political ideology?**

17 A. Yes.

18 **Q. Could you tell me what that -- what you believe**
19 **that is?**

20 A. So for many aspects -- so I -- first of all,
21 ideology is not an abstract way of organizing your
22 thinking about the world. This is some of the oldest
23 work in American politics. You ask people ideology in
24 the "ism" sense, liberalism, conservatism, communism,
25 you know, libertarianism, whatever, they don't have a

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1 clue. They don't know what the basic principles are.
2 They never apply them. They have no clue. So at the
3 same time, as John Jost has pointed out, the behavior of
4 voters is remarkably -- if you know, you know, as he
5 says in "The End of Ideology," if you think ideology
6 disappeared from American political life you must not be
7 seeing the same American political like I'm seeing
8 because this ideology runs rampant. So what is it? And
9 clearly it's -- you know, we don't have to scratch the
10 surface to know it's not principle. Right?

11 So if it was principle conservatism then --
12 like Greg Abbott believes local governments should make
13 their own decisions, not central governments. Right?
14 Well, yeah, that's true. Just tell me what the subject
15 matter is of the local government, and I'll tell you
16 whether he favors it or not. So that's not the same
17 thing as saying that he's not ideological. Right? He's
18 very ideological because the kind of things he wants to
19 stop Harris County from doing are a very specific kind
20 of thing. Right? It's not hard to predict what
21 Governor Abbott is going to get on about these days.
22 It's going to be a series of things that are very
23 closely related. And as it happens those things are
24 closely related to things that vary in the way human
25 brains are built. So --

28 (Pages 109 to 112)

<p style="text-align: right;">Page 113</p> <p>1 Q. How do you -- 2 A. -- the more -- 3 Q. I'm sorry. I didn't mean to cut you off. 4 Please go ahead. 5 A. So, I mean, the more easily disgusted someone 6 is in general the more conservative they'll be in 7 general on a very specific set of conservative issues, 8 those issues related basically to sexual behavior. So I 9 can do a really good job if I just know how easily 10 you're disgusted. And I can measure that by skin 11 conductance, by -- just by showing you a picture of 12 somebody eating worms. I can measure your skin 13 conductance, and I can do a good job of predicting your 14 opinion on gay marriage or abortion or premarital sex, 15 things that are related to basically just sexual purity 16 or sanctity. I can't do a very good job of saying 17 whether you're a fiscal conservative or whether you're a 18 hawk, but I can for that particular area. 19 Q. Are there any other areas that are close to 20 sexual areas? 21 A. Well, I mean, if I'm -- if instead of giving 22 you a disgusting image I give you a threatening image, 23 or I unexpectedly play a loud burst of white noise in 24 your earphones, I can do a very good job of predicting 25 your position on securing the border, gun control, more</p>	<p style="text-align: right;">Page 115</p> <p>1 person who is more easily startled or has a more active 2 threat system or threat recognition system places you in 3 a more threatening world. And someone who has, you 4 know, very little of that kind of -- and I think both 5 liberals and conservatives recognize this. Right? 6 Liberals recognize that conservatives see a 7 more dangerous world. And, of course, because different 8 ideologies like to be pejorative with each other 9 liberals say conservatives are just paranoid, and 10 everywhere they look they see a threat. Right? And 11 then you ask conservatives like, "Well, what about 12 liberals?" And they say, "Oh, yeah, that's great. Put 13 liberals in charge of the Defense Department. They 14 don't see threats anywhere." Right? "Liberals wear 15 rose-colored glasses. They look out in the world and 16 say, 'Maybe if we were just nice to them they'd be nice 17 to us.'" And conservatives say, "No. You could be nice 18 to them, and they'll kill you." Right? So one side is 19 seeing a scarier world than the other side. We know 20 that if we manipulate how scary the world is, like if 21 you make conservatives feel safer, you put them in a 22 safer environment, you create a safer system, they 23 become more liberal in their views. They actually 24 become more liberal across a fairly wide range of views. 25 If you threaten liberals, they become more</p>
<p style="text-align: right;">Page 114</p> <p>1 funding for the military, whether you would like to have 2 a bomb shelter in your backyard in the '60s. So we have 3 a mechanism in our brain that responds to threat. 4 It's -- among other things it's a -- part of that is a 5 startle mechanism. So we startle when we hear loud 6 noises. People who are conservative on national defense 7 startle significantly more easily than do liberals on 8 national defense, even if the -- what they're startling 9 to is just a burst of white noise, absolutely content 10 free. That startled reaction varies across individuals. 11 And there's a really nice study that looked at startle 12 reflex in infants, so how easily startled is an infant 13 because that gets recorded as part of Apgar. Like, 14 you're supposed to startle. 15 Q. Sure. 16 A. So they recorded that, and then followed that 17 up like 40 years later with how easily startled they 18 were as adults. And it's a -- there's about a 90 19 percent predictive relationship. So our startle 20 ability, the degree to which our amygdala and the 21 networks that serve the amygdala moving both to 22 impulsive reactions, like a jerking motion, and to 23 things like sensing, feeling, experience, and fear, 24 those things are -- those differences are differences 25 we're born with. And so being born into -- being born a</p>	<p style="text-align: right;">Page 116</p> <p>1 conservative. So you have both a resting state 2 difference, and then you have this reaction difference. 3 Right? If I ask you whether homosexual relations are 4 inappropriate or immoral or -- well, that would work 20 5 years ago. It doesn't really work anymore except with 6 people over the age of 70. It won't work with students 7 anymore. There's no variation in that at all. But if I 8 ask you whether incest was appropriate on a scale of one 9 to five, from one being absolutely never, you know, to 10 five being sure, what the heck, if I ask you that in a 11 nice, clean setting you'll answer that measurably 12 differently than if you do that in a setting where 13 there's something that might prompt disgust, a presence 14 of rotting food or -- one study that's a remarkable 15 study, they -- the only thing they varied in the entire 16 study was when they would direct the students who came 17 in in the central entryway, and then the hallway split. 18 And one side of the hallway was a hand sanitizer 19 dispenser. On the other side there wasn't. So the 20 experiment is just to flip which light of the hall the 21 table is on when they fill out the survey. So they 22 either told the students to go to the right, or they 23 told the students to go over to the table by the hand 24 sanitizer. That changes people's opinion. It 25 measurably changes their opinion on gay marriage, on</p>

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1 homosexuality in general, on abortion, on a whole series
2 of things related to sexual purity.

3 **Q. That is fascinating.**

4 A. Just a prompt of purity. It's something as
5 simple as that that prompts purity. And if you think
6 about traditional notions of ideology it's very hard to
7 understand why purity is a part of that at all.
8 Honestly, what in the -- in the thoughtful scheme,
9 Marxism or John Locke or whoever, what does sexual
10 behavior got to do with it? How did it get to be so
11 central to the political debate between liberals and
12 conservatives not just here but in every country in the
13 world and every period of history? Why is it so
14 central? Why is it so central to religion, between
15 liberal and conservative religions? Why is it important
16 to the orthodoxy and not important to the reformed?

17 So my answer to that is the reason that
18 it's central and the reason it's ever present is that
19 human beings differ from each other. And they differ in
20 two ways. They differ in the sense that their life
21 experience is completely unique. And so you are who you
22 are because of what you lived. But you also were
23 completely unique the day you were born. And that
24 uniqueness the day you were born is not just your genes.
25 It's a whole set of structures inside your brain that

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1 out there like 1.12 percent, so you're going to -- as
2 the family spreads out, you see -- you see more
3 difference. And then more broadly across the population
4 we're for the most part unrelated. We share
5 approximately zero segregating genes within the average
6 person in the population so --

7 **Q. That's interesting. And the course of that**
8 **study -- I think that you cited this study -- it's**
9 **called "Political Attitudes Vary with Detection of**
10 **Androstenone"?**

11 A. Androstenone. Yeah.

12 **Q. Am I saying that correctly? This is your work,**
13 **correct?**

14 A. It's a team.

15 **Q. Yeah, of course. I've labeled this Expert --**
16 **Expert Exhibit No. 4. Could you review it and**
17 **authenticate it for me, please?**

18 A. It looks like the study.

19 **Q. So this is a report you published with three**
20 **other folks it looks like; is that correct?**

21 A. Yes.

22 **Q. And could you describe what this report is to**
23 **the court, please?**

24 A. So this is a study that -- there's a -- people
25 have a biological difference in their ability to detect

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1 are going to make you a different person than, for
2 example, your twin. I have twins, and they are as
3 different as night and day. And the same is not true
4 for identical twins.

5 **Q. That's true.**

6 A. Identicals are not different as night and day.
7 The likelihood that they'll share the same adult
8 ideology is twice as high if they're identical twins as
9 if they're not identical twins. And parents don't
10 raise -- parents don't tell -- when they have identical
11 twins, they don't say, you know, "Republicans are great,
12 and let's support Donald Trump." But if they're
13 nonidentical twins they take one of them aside and say,
14 "Trump is a great guy." They take the other one aside
15 and say, "Joe Biden is a terrific guy." Right? They
16 lived in the same environment, they were born at the
17 same time, and yet they are markedly different on
18 fundamental issues like political ideology. And that to
19 me tells me there's a biological basis to it.

20 And that biological basis, like all the
21 rest of our biology, is just distributed randomly as a
22 result of sexual reproduction. Right? I'm more likely
23 to have the same -- politics runs in families because,
24 after all, George W. Bush has 50 percent of George H.W.
25 Bush's genetic material. Preston, on the other hand, is

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1 and in their classification of the pleasantness or
2 unpleasantness of androstenone. And this is a study
3 that looks at whether that difference is related to
4 anything that might be related to politics, in
5 particular to sort of what broadly might be called a
6 preference for hierarchy.

7 **Q. And what were the findings? Do you recall?**

8 A. The findings, that there is a modest
9 relationship between the ability to and the valence on
10 the detection of androstenone and a preference for
11 hierarchy.

12 **Q. So what is androstenone? I'm not sure I**
13 **understand what it is.**

14 A. It's a -- it's a -- it's a chemical that's
15 present in humans. It's a -- part of a breakdown
16 product of testosterone. So it's slightly more elevated
17 in males than females, but it's present in all humans.
18 It makes its way as a discrete molecule out of the body
19 through sweat. And when you give people a whiff of it
20 people either -- a substantial portion of the public
21 can't smell anything, so they don't detect any odor at
22 all. And then another set of the public describes the
23 odor as being similar to vanilla or ginger, something
24 like that, a kind of a pleasant spicy odor. And then
25 another portion of the public describes the odor as sort

30 (Pages 117 to 120)

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1 of offensive. Urine is one of the things people often
2 say it smells like. So for some people it's a very
3 unpleasant odor, for some people it's a pleasant,
4 pleasing odor, and then for some people it's no odor at
5 all.

6 **Q. That's interesting.**

7 A. There are actually -- although we have the
8 ability to separate about 400,000 chemicals through our
9 olfactory sense, which is in itself a remarkable -- it's
10 the only part of our brain that's exposed to air. The
11 olfactory bulb is literally a part of the physical brain
12 that protrudes out into the sinuses in order to have the
13 immediate ability to detect these chemical keys. And
14 the keys are very specific. There is a -- there is a
15 receptor for every single chemical that you can detect.
16 The ones where the receptor is -- where we have
17 receptors that at one time were active but are no
18 longer -- because of mutation are no longer functional,
19 we can't smell, so we actually over time have lost a lot
20 of active receptor capability. And uniquely among
21 things related to brain physiology each one of those
22 receptors has to be built by a separate gene.

23 So as a class we have more genes for
24 olfaction receptors than we have for any other
25 physiological character, precisely because it takes a

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1 separate gene to build the protein that can detect the
2 chemical key for each one of them. And what that means
3 is across that you very often have situations where
4 people are more or less able to smell certain things.
5 So some -- for almost everything there's at least some
6 subset of people who can't detect the odor because of a
7 mutation in the -- in the genes or an improperly formed
8 receptor. But it's rare to have -- and often that's
9 accompanied by people who describe it as intensely
10 something or not so intensely something. But it's rare
11 to have a complete valence, for something to be detected
12 by some people that's very positive and other people
13 it's very negative.

14 **Q. That's fascinating.**

15 A. Cilantro is the --

16 **Q. Right.**

17 A. -- the only taste equivalent in taste, is that
18 cilantro either tastes lovely or like soap. And
19 people -- a lot of people don't like soap in their food.
20 I don't like soap in my food, so I don't like cilantro.
21 But other people find it wonderful. So it's in that
22 same rare category.

23 **Q. Yeah. I love it, so I guess we're just**
24 **different.**

25 A. There but for the grace of God, go I.

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1 **Q. So it looks like on page 14 -- if you will turn**
2 **to that, please. I want to discuss some of the**
3 **findings, if you don't mind. On the bottom part it**
4 **discusses the results for the political batteries or**
5 **some of the batteries in Table 1; is that correct?**

6 A. Yes.

7 **Q. And it looks like there was some findings. So**
8 **it looks like "Preferences for literalism were**
9 **positively correlated with androstenone intensity,**
10 **albeit at a relaxed level of significance." Is that**
11 **correct?**

12 A. Correct.

13 **Q. What's the R score for that?**

14 A. 0.16.

15 **Q. Okay. Now, you stand by that finding, correct?**

16 A. Yes.

17 **Q. Okay. What is the R-square score for that**
18 **finding?**

19 A. That would be whatever 0.16 is squared so it --

20 **Q. I have that as 0.0256. Correct?**

21 A. That would be correct. Yes.

22 **Q. Is that lower or higher than Bob Stein's**
23 **R-square?**

24 A. Lower.

25 **Q. Okay. Again on -- you wrote a little bit below**

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1 **that that "disgust sensitivity and androstenone**
2 **intensity" -- let's see here -- so there's a -- I'm**
3 **going to get you the whole thing. "The same trended for**
4 **disgust sensitivity and androstenone intensity." Is**
5 **that correct?**

6 A. Yes.

7 **Q. And you stand by that finding, correct?**

8 A. Yes.

9 **Q. What is the R score for that finding?**

10 A. That one is 0.16.

11 **Q. And what is the R-square of that finding?**

12 A. I assume it would be pretty similar to the
13 previous one.

14 **Q. Correct. Yes, sir.**

15 A. Yes.

16 **Q. And I think I have that as 0.0256. Correct?**

17 A. Yes.

18 **Q. And is that lower or higher than Bob Stein's**
19 **R-square?**

20 A. Lower.

21 **Q. Okay. I think there is another finding here.**
22 **"Threat sensitivity." Right below that it says "Threat**
23 **sensitivity was also positively correlated with**
24 **androstenone intensity." Is that correct?**

25 A. Yes.

31 (Pages 121 to 124)

<p style="text-align: right;">Page 125</p> <p>1 Q. And you stand by that finding, correct?</p> <p>2 A. Yes.</p> <p>3 Q. And what is the R score of that finding?</p> <p>4 A. That is 0.17.</p> <p>5 Q. And what is the R-square score of that?</p> <p>6 A. Slightly, however slightly, minisculely higher</p> <p>7 than the previous two.</p> <p>8 Q. I have that as 0.0289. Does that seem correct?</p> <p>9 A. That seems correct.</p> <p>10 Q. Is that lower or higher than Bob Stein's</p> <p>11 R-square?</p> <p>12 A. Lower.</p> <p>13 Q. Okay. Further down you wrote that</p> <p>14 "androsteneone intensity was positively correlated with</p> <p>15 the Preferences for Social Order battery." Is that</p> <p>16 correct?</p> <p>17 A. Correct.</p> <p>18 Q. And what was the R score for that finding?</p> <p>19 A. That is 0.19.</p> <p>20 Q. Pretty good?</p> <p>21 A. We're starting to get up there now. We're</p> <p>22 getting pretty close to -- we're getting to the threes,</p> <p>23 aren't we?</p> <p>24 Q. Yes, sir.</p> <p>25 A. I'm getting excited.</p>	<p style="text-align: right;">Page 127</p> <p>1 A. Yeah. 0.21.</p> <p>2 Q. Okay. And what is the R-square for that</p> <p>3 finding?</p> <p>4 A. Must have made it to 0.04 by now.</p> <p>5 Q. Yes, we did. It's 0.0441. Is that correct?</p> <p>6 That seem about right to you?</p> <p>7 A. That seems a little higher than I would think,</p> <p>8 but okay. I'll take it.</p> <p>9 Q. Well, let's just do it real quick. Let me see,</p> <p>10 get a calculator. I may have done it incorrectly. I'm</p> <p>11 not a social scientist. I just square the number,</p> <p>12 correct?</p> <p>13 A. Yeah, you just square the number.</p> <p>14 Q. Okay.</p> <p>15 A. I'm not a calculator, so we're in the same boat</p> <p>16 when it comes to this one. This is not really about</p> <p>17 being a social scientist. I don't know. It just</p> <p>18 seems -- oh, golly. We are getting somewhere. I'm</p> <p>19 impressed.</p> <p>20 Q. Just to be clear with the record, the R-square</p> <p>21 for that finding is 0.0441, correct?</p> <p>22 A. That's correct.</p> <p>23 Q. And is that lower or higher than Bob Stein's</p> <p>24 R-square?</p> <p>25 A. Lower.</p>
<p style="text-align: right;">Page 126</p> <p>1 Q. So what is the R-square of that?</p> <p>2 A. It's something in the -- between three and --</p> <p>3 0.03 and 0.04.</p> <p>4 Q. I have it as 0.0361. Does that sound about</p> <p>5 correct?</p> <p>6 A. It sounds fair.</p> <p>7 Q. All right. And you stand by that finding,</p> <p>8 correct?</p> <p>9 A. Yes.</p> <p>10 Q. And is that lower or higher than Bob</p> <p>11 Stein's R-square?</p> <p>12 A. Lower.</p> <p>13 Q. Further down you say "we do find that</p> <p>14 androsteneone intensity continues to exhibit a</p> <p>15 significant positive relationship with preferences</p> <p>16 for social order." Is that correct?</p> <p>17 A. Correct.</p> <p>18 Q. And do you stand by that finding, sir?</p> <p>19 A. Yes.</p> <p>20 Q. Okay. And what was the R score for that</p> <p>21 number? I have it as -- it should be on page 16 in the</p> <p>22 full -- first full graph, the last sentence, or the next</p> <p>23 to last sentence. "Though we do find that androsteneone</p> <p>24 intensity continues to exhibit a significant positive</p> <p>25 relationship" --</p>	<p style="text-align: right;">Page 128</p> <p>1 Q. Okay. That's all I have, I think, on that.</p> <p>2 Would you believe that biological</p> <p>3 ideological preferences, are they more outcome</p> <p>4 determinative in a nonpartisan election I wonder?</p> <p>5 A. It's -- I haven't really thought about that</p> <p>6 much. It's -- partisanship itself is -- the direction</p> <p>7 of partisanship itself is not very biological.</p> <p>8 Q. Okay.</p> <p>9 A. So there's very little heritability. Party ID</p> <p>10 comes from exactly where you expect it to come from. It</p> <p>11 comes from your parents. It comes from your life</p> <p>12 experience. To the extent that it shows heritability</p> <p>13 it's largely through the heritability of ideology. So,</p> <p>14 for example, if your parents are liberal Democrats but,</p> <p>15 you know, you turn out to be sort of biologically a tilt</p> <p>16 conservative, then while you will start out, probably</p> <p>17 start out identifying as a Democrat, you may by the time</p> <p>18 you're 30 have drifted over and be an independent or</p> <p>19 possibly even a moderate Republican. So that what's</p> <p>20 being -- what's operating there is this underlying</p> <p>21 ideological tendency to make you more or less</p> <p>22 comfortable with a party.</p> <p>23 I remember talking to a southern senator at</p> <p>24 one point, and he said, "This is a bunch of baloney. I</p> <p>25 know it's a bunch of baloney because I used to be a</p>

32 (Pages 125 to 128)

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1 Democrat, and now I'm a Republican." I said, "So even
2 though" -- he said, "How could it be biology? I have
3 the same" -- "I have the same genes that I had 20 years
4 ago when I was a Democrat, but now I'm a Republican." I
5 said, "Well, I don't know. I guess maybe you just
6 thought about it and decided to change your world of
7 view." He said, "I didn't change. The damn party has
8 changed." I said, "Okay. You're sure making my point
9 for me here, and you're sure making it easy." It's
10 like -- it really is a really good example. Right?
11 He -- you know, he was comfortable enough for a while in
12 the old Democratic Party because it had a very
13 conservative southern wing, but he shifted over.
14 So in that sense your -- sort of your
15 predisposition can affect your likelihood of staying in
16 a party you inherit from your parents. It can have an
17 affect when your parents are of different parties. I
18 come from a mixed marriage. My mother was a Democrat.
19 My father was a Republican. My brother is a Republican.
20 I'm a Democrat. So you know how those things work. You
21 got to pick your battles and pick who you're going to
22 side with. But partisanship itself is largely a choice
23 people make or a choice they don't make in the sense
24 that they inherit it, so I -- in the U.S. at least party
25 ideas is an identification. It is closer to your

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1 religious affiliation than it is to most other traits.
2 It is not just a preference for one party over the
3 other. People don't just say "I prefer the Democrats."
4 People say "I am a Democrat."
5 **Q. Correct.**
6 A. That wouldn't be true in Europe. Most
7 Europeans don't identify themselves as a party. They
8 identify which party they prefer or vote for or where
9 they are in a kind of party spectrum, but they don't
10 typically think of themselves as -- in the way that we
11 think of ourselves as Texans or Catholics or Americans.
12 So it's a -- it's a self-identification, and like most
13 self-identifications there's strong childhood effects,
14 and then strong adult choice effects. So what -- so
15 would underlying -- underlying ideological drive more in
16 a nonpartisan than a partisan? I think it would --
17 obviously it would depend on a lot of things. There's a
18 social science answer for you.
19 My guess is it's probably more important --
20 it probably is more important as the salience of
21 ideology goes up in the campaign itself. So I'll make a
22 bold prediction here. Ideology is going to become
23 increasingly important in nonpartisan elections, not
24 just because they're nonpartisan, but because ideology
25 is being injected into those elections, even in the form

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1 of really frank partisanship. Right? So they just
2 aren't -- you know, the old days when the median
3 Republican and the median Democrat were both sort of
4 good school people, right, the -- the school board
5 elections were nonpartisan because mainstream
6 Republicans and Democrats, although they were
7 ideologically different, believed in quality, free
8 public education, believed in good universities. Right?
9 Those days are over. That just is not the case anymore.
10 **Q. Indeed.**

11 A. And so that's going to become -- you know, we
12 don't -- go to a school board meeting. My God. I used
13 to tell my students to go to school board meetings and
14 federal court hearings because it would be
15 inspirational. I sure as heck don't tell them that
16 anymore. Federal court still is inspirational. You
17 know, I know. I'm pretty careful telling them which
18 judge. No, I'm not going to share that --

19 **Q. Okay.**

20 A. -- information at this point. So yeah. I
21 mean, I don't know. I guess it's -- it's a good
22 research question.

23 **Q. Is it possible?**

24 A. It is -- I think it is possible that -- I mean,
25 quite frankly I think, yeah, it's -- and, again, I don't

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1 think it really -- I don't think you can really -- one
2 of the things I think people misunderstand about our
3 work is that people have this idea that if something has
4 some genetic precursor or some physical brain precursor
5 that it must be more important or less -- you know, less
6 variable or something else. And I always try to tell
7 students that, you know, the -- sort of the biology of
8 human politics is like the -- is like the bayou current.
9 You may not even realize bayous are flowing bodies of
10 water. You could live right here a long time and not
11 recognize the bayou actually flows in some direction,
12 you know, unless of course we got a quarter of an inch
13 of rain, in which case they're obviously moving. But
14 it's a very small, very weak force, but it's a constant
15 force. And the day-to-day forces, the things that
16 happen in our lives, the people that we respect, the
17 jobs we take, those are big forces. They're powerful
18 forces. They push us all over the place.

19 And you just -- you can -- you can just
20 look at the change in, you know, in the average Democrat
21 or the average Republican's position on a whole host of
22 things over time. Those social forces are powerful
23 forces. The power of your brain's biology is that it
24 works 24 hours a day very quietly in the background and
25 slowly -- whatever position you get pushed to you --

33 (Pages 129 to 132)

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1 like a boat on a very slow -- I can predict the
2 direction. All other things being equal you're going to
3 come back toward that center of gravity that your
4 biology gives you with regard to ideology. And that's
5 about all. Just a weak force that tends to pull you --
6 it tends to pull you in a direction. So it's definitely
7 not the strong force that people normally think of
8 biology as being. When it comes to things like
9 ideology, which are quite abstract, we're much too smart
10 to be led around by that. Right? Because we're unlike
11 other animals. We don't just think. We think about our
12 thinking. That metacognition is a really distinctive
13 trait, and it reduces, right, and it reduces -- that's
14 why we have the ability to defer gratification in ways
15 that are really remarkable.

16 **Q. Some of us. Not necessarily me.**

17 A. Yeah. Well, you know, I'm not doing such a
18 great job myself. But just speaking as one person to
19 another who can only defer certain kinds of
20 gratification on a successful basis. But the point is,
21 of course, right, that the -- sort of the ability to be
22 aware of that, to be able to think about that really
23 reduces the ability for -- for at least some drive.

24 So the other thing I think is really
25 important is that politics is a -- is a part of what

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1 A. So, I mean, if you think about the -- obviously
2 there's a -- there's a thing called race that's a
3 completely social figment -- not a figment -- but it's
4 completely a social creation. It's an intellectual
5 thing. It's an abstract category in which we bundle all
6 kinds of things. But if you want to look at sort of
7 what are the things that are most likely to create that
8 bundle, right, there's a reason why we talk about people
9 of color. Right? There are gradations in the tint of
10 people's skin, and that gradation of the tint of their
11 skin is genetic. We can be tanned or untanned, but the
12 amount of -- you know, all other things being equal, the
13 proportion of external melanin in your skin is
14 hereditary. Right? If both of your parents are black,
15 you're likely to be black. Right?

16 So in that sense the markers out of which
17 we've created this -- this kind of sometimes reasonable
18 and mostly unreasonable figment about racial categories,
19 the markers themselves are -- are often genetic. And
20 because they're genetic they both provide an easy hook
21 for saying "you're different than me." Right? "I can
22 see that you're different." And skin color is one of
23 the markers that's commonly used for that. Although
24 there are other more subtle markers that are used in
25 things like the caste system in India, for example.

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1 makes us social animals. And that's really not the most
2 fundamental part. Right? The really fundamental parts
3 of us, the things that are survival driven are
4 appetitive and aversive. Right? So our appetitive
5 drives, our drive to sexually reproduce, our drive to
6 get food, to get shelter, those basic drives are really
7 powerful things. And those are things that we have --
8 can struggle with controlling. But, you know, this sort
9 of slight left-right predispositions are pretty modest
10 drives, and therefore our ability to outthink ourselves
11 is really pretty powerful in that realm.

12 **Q. Fair enough.**

13 A. Not to mention the effect of other people.
14 Like any time I find myself drifting however slightly
15 conservative I have my wife to correct my thinking and
16 to point out that I'm drifting a little bit, a little
17 bit in the wrong -- in the wrong direction, or my
18 brother to point out that I'm just a complete idiot for
19 believing pretty much anything, anything that I believe
20 so --

21 **Q. Do you believe, or is it your position, that**
22 **there's a genetic component to race?**

23 A. Yes.

24 **Q. Could you talk a little bit more about that**
25 **please?**

Page 136

1 **Q. Sure.**

2 A. So there's a biological hook there. And then
3 does that biological hook create all this other
4 epiphenomena around it? It doesn't. But it does make
5 that -- it helps make that epiphenomena more powerful
6 out in the world. The fact that it's biological helps
7 account not only its -- for some of its power, but also
8 for some of its invidiousness. Right? Because you
9 can't change the -- you're born a skin color. You're
10 born tall, or you're born short. Right? So physical
11 characteristics that are -- you're born with that are
12 present at birth and are genetic are not things that you
13 can change. And recognizing that you can't change them
14 can be powerful in reducing things like racism, but they
15 also can be things that trap people. Right?

16 If you're in the Dalit category, you're
17 born into it, and you're trapped into it. And if you
18 are -- you know, if your parents are black and you're
19 lighter skinned than they are, you may be able to choose
20 a different racial category for yourself. But for the
21 most part that's not something people can do. So it
22 isn't an act of will, and so things that are imposed on
23 that basis are things that people can't control.
24 Recognizing that I think is really -- can be very -- can
25 be damaging in the sense that it -- when people think of

34 (Pages 133 to 136)

<p style="text-align: right;">Page 137</p> <p>1 it as biologically different they think, therefore, the 2 solution to that might be genocide. On the other hand, 3 if you think it's not biological, then the solution may 4 be reeducation. Right? So for a genocide -- I always 5 tell my students genocide is wrong not because it's 6 mistaken, although it is, it's wrong because it's 7 genocide. Right? But reeducation -- the Chinese 8 cultural revolution is wrong. It killed millions of 9 people. It destroyed families and societies all on the 10 false belief that you could completely change, you know, 11 a college professor of art into a good farm laborer in 12 their mind by just making them do farm labor. Right? 13 So you can't change everything about people, whether 14 it's what they think or the way they appear. 15 And the solution to that can be much more 16 positive. And I think you see that with sexual 17 orientation. Right? So in an era when people believe 18 sexual orientation was a choice then people did not want 19 people to make the wrong choice. Well-meaning parents, 20 probably to protect their kids from making a mistake in 21 that era, possibly even well-meaning lawmakers, tried 22 to -- tried to regulate that. As the proportion of 23 people who think that sexual orientation is something 24 you're born with goes up the proportion of people who 25 care about it goes down.</p>	<p style="text-align: right;">Page 139</p> <p>1 liberals. You know, just roll the dice. You could have 2 been born a liberal." Right? "So if you just accept 3 that they're born that way then you can stop 4 wanting them" -- you can stop thinking that what they're 5 doing is directed at you, and you can stop thinking that 6 you're going to change them" because anybody who's spent 7 any time discussing politics knows you're not going to 8 change very many minds. You're going to make people 9 mad, but you're not going to change -- you can change 10 policy. You can find a way to make a policy work that 11 fits somewhere in between. But if your way to change 12 policy is change the mind; that is, change the 13 fundamental ideological beliefs of your fellow 14 legislator or your next door neighbor, that's a fool's 15 errand. Right? It's just not going to happen. 16 So if you just accept it -- I mean, most of 17 my neighbors are conservatives and, you know, I'm not 18 fans of their politics, but I -- you know, I don't have 19 any personal animosity to them. You know, I put up my 20 signs, and they put up theirs, and, you know, we stare 21 at each other, but I don't -- most of them are what they 22 are, and I -- that's just -- one of our graduate 23 students, a very talented black graduate student is 24 very, very conservative and very political. And he 25 said, "It's hard. It is hard. It's" -- "in many ways,"</p>
<p style="text-align: right;">Page 138</p> <p>1 Q. I understand. 2 A. So young people today believe that you're born 3 into the sexual orientation, and so that expression 4 "born that way," right, what about it? Right? "This 5 is" -- "this is just" -- "this is who I am." And so I 6 think as much as history has come down for the most part 7 on negatively exploiting the characteristics, the 8 physical -- heritable physical characteristics that we 9 then bundle up into this fiction of race it's -- it's 10 also possible understanding that those are just physical 11 characteristics people are born with can -- can diminish 12 that, as it does in the case of sexual orientation. And 13 my hope is that the same thing is true with regard to 14 ideology. 15 I tell my students, "I know you don't 16 like" -- I mean, these are Rice students. So there are 17 like two conservatives in the class, and they're not -- 18 nobody is happy with them when they pipe up. And so I 19 say, "Look, you're not happy with," you know, whatever 20 it is they're saying here, "but you know what? Don't be 21 so full of yourself. Don't be so proud that you're a 22 liberal. You know, but for the grace of God or but from 23 your genetics you could have been this person. How 24 would you feel about that? And you conservatives, 25 you're like looking down your nose at all these</p>	<p style="text-align: right;">Page 140</p> <p>1 he said, "it's harder now to be a black conservative 2 than it is just to be black," right, that the -- the 3 people just don't like it. They just think he's wrong, 4 and they don't understand why he would -- why he would 5 side with people who don't side -- who have animosity 6 toward him because of the color of his skin. 7 Just a really tough -- another student who 8 is very openly gay and very conservative, like 9 Federalist Society, and he said the weird thing about 10 being at Rice is nobody cared that he was gay, but 11 everybody thought the fact that he was in The Federalist 12 Society was like -- like people looked at him with open 13 disgust when they found out he was in The Federalist 14 Society. He said the funniest thing was that the other 15 people in The Federalist Society because they were just 16 young Rice people, right, they just said, "You're gay. 17 I mean, obviously. You know, you're a smart person, and 18 you are a moral person, so you wouldn't choose to be 19 gay." Or it wasn't that they weren't, you know, openly 20 prejudice against that idea. But they said, "You know, 21 you're a good example." Right? "People don't choose to 22 be gay because God knows you wouldn't choose to be. So 23 that's just the way you are." And they were pretty 24 accepting of him. But the people in the Gay and Lesbian 25 Student Association never accepted the fact that he was</p>

35 (Pages 137 to 140)

<p style="text-align: right;">Page 141</p> <p>1 a conservative. At the end of the day that kept coming 2 up. This was actually during that era of the W. 3 campaign -- 4 Q. Sure. 5 A. -- when it was being openly exploited to drive 6 voter turnout in Florida and Texas. And they just could 7 not -- and he said, you know, until he took this class 8 he didn't -- he didn't really have a response. He just 9 knew that he believed in conservative things. And so he 10 said, "This is" -- "this is what I tell people now. 11 When people say 'how could you be a conservative,' I say 12 'I was born that way. This is the way God made me, and 13 I can't help it.'" So, you know, I think it can be -- 14 again, it could be a positive or a negative thing. 15 I don't think it's useful -- again, denying 16 that there's a biology to sexual orientation I think is 17 a very bad idea. Whether at a particular moment in time 18 that's the -- that's creating prejudice. Right? You 19 can think -- you know, one of the solutions if -- if in 20 fact people are just born that way and they can't change 21 it, then there's an obvious solution. If gay is wrong, 22 then you just kill gay people. You could just do one of 23 those little tests like Down's syndrome. "Wait a 24 minute. My kid is going to be born gay. Let's, you 25 know" -- "you know, you should just get rid of those</p>	<p style="text-align: right;">Page 143</p> <p>1 think that's -- that part of it is a reality. The rest 2 of it not. 3 Q. Okay. Fair enough. 4 A. Hence -- hence the fact that you got to -- when 5 you look at ideology across race and ethnicity there are 6 big party differences, but as Texas Republicans are 7 discovering while there are party differences across 8 Hispanics and non-Hispanics there are also some pretty 9 big ideological mismatches between those categories. 10 And you can -- that can be exploited, or you can -- you 11 know, you can ignore that. 12 W. wanted to -- well, W. very much wanted, 13 you know, to make Hispanics majority Republican. I 14 don't believe that that's shared by all the leaders of 15 the current Republican party. But there's certainly -- 16 there's a lever to do that, and the lever to do that is 17 that, you know, Hispanics are conservative, moderate, or 18 liberal at pretty much the same levels as everybody else 19 in Texas, and -- and so if you stop poking them in the 20 eye with a sharp stick they -- you know, they might 21 actually come around and vote for a more -- for sort of 22 a business conservative party so -- 23 Q. My next question actually is that do you 24 believe that there is a correlation between genetically 25 determined ideology and race?</p>
<p style="text-align: right;">Page 142</p> <p>1 people." And obviously that's not the way the modern 2 world thinks, but you can see where that might occur to 3 people if they believed it was -- if they believed it 4 was biological. It might be easier from that 5 perspective to be able to convince people that you could 6 change your sexual orientation. 7 The same way that, you know, Protestants 8 and Jews in Europe, like, you know, "Tell me kiss the 9 ring. Whatever. What is it you need me to do here? 10 Like, I don't want to end up with my head on a pike." 11 So -- so I think there can be -- there can be a downside 12 to it. But at the same time I think denying -- denying 13 that there are -- when you say that everything about 14 race is nonbiological, including then the suggestion 15 that there are not physical traits that have been used 16 to build on top of that a racial fiction, then I think 17 you -- you really put yourself in a bad position because 18 empirically it's -- there are characteristics that are 19 heritable. And if we're going to -- if by person of 20 color you just mean someone with darker skin, that 21 characteristic you're referring to is a -- very much a 22 biological characteristic. It's something they can't 23 change by will. It's something that they're going to 24 pass on to their children. And so it's a -- it's a -- 25 you know, it is a -- it is a physical marker. And I</p>	<p style="text-align: right;">Page 144</p> <p>1 A. No. 2 Q. Do you believe that there's a correlation 3 between genetically determined ideology and ethnicity? 4 A. No. 5 Q. Okay. So the dispersion of ideology among the 6 ethnicities and races is roughly equal regardless of -- 7 A. Yeah, I don't -- I don't believe that. I 8 don't -- I don't know that, so the -- the kind of scale 9 of study that it would take to establish that is -- it 10 would take a very large-scale study. It would have to 11 be -- it would have to be a global study because you 12 don't want to get people in particular settings. So I'm 13 not aware that anybody has actually done that on that 14 scale, but I've never seen anything to indicate that 15 there -- that those two things were associated, and nor 16 do I have any reason to believe they would be. 17 Q. Okay. Just one last question I think, and then 18 I'm going to confer with Barry and make sure I got all 19 the spaces. But I did want to ask you a little bit 20 about your book, if you don't mind. So you wrote a 21 book. What's the title of the book, sir? 22 A. "Predisposed." 23 Q. You wrote it with some other authors, and 24 you've -- 25 A. Yes.</p>

<p style="text-align: right;">Page 145</p> <p>1 Q. -- published with these authors before?</p> <p>2 A. Yes.</p> <p>3 Q. Largely on the topic of conversation we just</p> <p>4 had for about the last 25 minutes, correct?</p> <p>5 A. Correct.</p> <p>6 Q. Okay. Now, I haven't read the entirety. But</p> <p>7 what portion of the book did you write?</p> <p>8 A. Fairly little.</p> <p>9 Q. Okay.</p> <p>10 A. So the actual writing, sort of the text is</p> <p>11 mostly the work of -- I'd say probably two-thirds the</p> <p>12 work of Kevin Smith and -- and first draft. The rest of</p> <p>13 it would be Hibbing. So mine sort of -- the book is --</p> <p>14 pulls together a bunch of things that we've done</p> <p>15 research on, or that we've presented papers on, talked</p> <p>16 about and so forth. So I was actively involved at</p> <p>17 the -- at the research phase and served primarily as --</p> <p>18 sort of in the early stages in outlining what the book</p> <p>19 was going to look like, what we were going to put in</p> <p>20 what sections. But the book itself was written almost</p> <p>21 entirely by, the text of the book, by Hibbing and Kevin</p> <p>22 Smith at Nebraska.</p> <p>23 Q. But you endorse these findings largely?</p> <p>24 A. Yes.</p> <p>25 Q. Is there any part of the book that you don't</p>	<p style="text-align: right;">Page 147</p> <p>1 And I want to -- I don't want to put this in the record.</p> <p>2 This is my book. I love it. But I want to make sure</p> <p>3 I --</p> <p>4 A. Well, we got that on the record. I'm happy.</p> <p>5 Do whatever you want.</p> <p>6 Q. I want to talk about the finding here. So if I</p> <p>7 could hand it to you.</p> <p>8 A. Yes.</p> <p>9 Q. If you could read it, review it, and tell me</p> <p>10 what's being said, specifically from the last paragraph</p> <p>11 of 163 to the first paragraph of 165.</p> <p>12 A. All right.</p> <p>13 Q. All right. Here you go.</p> <p>14 A. Yes.</p> <p>15 Q. So what is that part of the book talking about?</p> <p>16 A. So there are -- this is not our research, but</p> <p>17 there's a big body of research by Haidt and Graham and a</p> <p>18 whole research team that focuses on kind of dimensions</p> <p>19 of -- they call them dimensions of moral thinking that</p> <p>20 underlie dimensions of kind of political belief or</p> <p>21 political ideology. And John Jost, a political</p> <p>22 psychologist, picks up on some of this as well. So, you</p> <p>23 know, people have sort of placed different values on</p> <p>24 different kinds of things. Right? So one of the things</p> <p>25 some people feel very strongly about is that basically</p>
<p style="text-align: right;">Page 146</p> <p>1 endorse?</p> <p>2 A. I don't -- I haven't read the book since the</p> <p>3 book came out, so I -- I couldn't -- if you point me in</p> <p>4 the direction of something, I'll tell you if I endorse</p> <p>5 it or don't endorse it.</p> <p>6 Q. I'm not cherry-picking. I'm just wondering. I</p> <p>7 want to make sure that this is your opinion and are</p> <p>8 parts of your opinion.</p> <p>9 A. Parts of it are certainly my opinion but I</p> <p>10 didn't write most of it so there may well be stuff in</p> <p>11 there that I don't agree with. That's -- you know,</p> <p>12 there are values to team research, and there are --</p> <p>13 there are disvalues. Right? Sometimes there are things</p> <p>14 in there that -- you know, that weren't what you</p> <p>15 personally believed but, you know, somebody feels</p> <p>16 strongly about them.</p> <p>17 Q. So I want to talk a little bit about the</p> <p>18 portion called "Different Slaters." And specifically I</p> <p>19 want to talk about the racial portion of it or the --</p> <p>20 that's the wrong way to say it. There's a portion of</p> <p>21 this chapter that talks about racial policies,</p> <p>22 specifically Affirmative Action. Do you -- are you</p> <p>23 aware -- do you remember that part of the book?</p> <p>24 A. Yeah.</p> <p>25 Q. And I'm not sure I understand the conclusion.</p>	<p style="text-align: right;">Page 148</p> <p>1 everybody should be treated the same, right, that we</p> <p>2 should be colorblind or race blind, whatever. And</p> <p>3 they -- and that's a -- for them that's a -- that's a</p> <p>4 strong principle. For other people in their -- their</p> <p>5 moral judgments are more connected to what Haidt's -- a</p> <p>6 category Haidt calls care or harm, which is people are</p> <p>7 motivated to respond on the basis of, you know, if -- if</p> <p>8 someone has been harmed, they -- they deserve care. And</p> <p>9 so that they look at it in terms of, you know, sort of</p> <p>10 responding in a -- what you might think of as maybe a</p> <p>11 more empathetic way.</p> <p>12 But, again, you can -- there's a morality</p> <p>13 if you believe Haidt and Graham. There is a kind of</p> <p>14 morality and also a kind of a political belief centered</p> <p>15 around the issue about -- about care and harm. This is</p> <p>16 what Lakoff, who I think is mistaken, calls this</p> <p>17 maternal politics versus paternal politics. So the sort</p> <p>18 of politics of order and respect and hierarchy, he</p> <p>19 teaches those as sort of paternal politics. And</p> <p>20 maternal politics is more about this kind of care and so</p> <p>21 forth. So you can think about that in -- I think one of</p> <p>22 the areas is -- maybe it's quite clear -- is sort of in</p> <p>23 like sentencing guidelines. Right? So what should --</p> <p>24 how should you sentence people? I mean, this -- one of</p> <p>25 my colleagues asked, he says, "I never understood why if</p>

<p style="text-align: right;">Page 149</p> <p>1 you're going to pass a law to make something illegal why 2 don't you define what the punishment is for it?" Right? 3 "So if the punishment is the death penalty, it's the 4 death penalty." Right? "And if not's the death penalty 5 then I'd like to know what it is." He said, "Like if 6 you rob a bank what is the appropriate punishment? I 7 mean, if it's a year, make it a year. If it's 10 years, 8 make it 10 years." So his idea is you take an action, 9 the action has a consequence, and the consequence should 10 be the same for everybody. He doesn't like the idea 11 that some people get life in prison and some people get 12 parole. He thinks that's just wrong, everybody should 13 be treated the same. 14 And, of course, we've experimented with 15 that in terms of judicial sentencing guidelines, and we 16 know the havoc that can produce. Right? Because it 17 just doesn't make any -- it doesn't make any sense to 18 not treat people as individuals. This is what students 19 of a bureaucracy called Bureaupathology, which is 20 everybody wants -- when somebody walks into a Social 21 Security office what do they want? They want to explain 22 to someone what their particular problem is, and then 23 they want the person to fix their particular problem on 24 their particular basis. Like, "I know that this is 25 supposed to take it here, or whatever, but I need it to</p>	<p style="text-align: right;">Page 151</p> <p>1 discovered things. They're found things. This is the 2 way some people view the world. Most people are 3 somewhere in between. But there are people who feel 4 very strongly that sort of equality under the law means 5 everybody is treated exactly the same way and there 6 could be no -- no interference in that. 7 Other people feel very strongly that that's 8 a really -- it's, you know, an immoral approach and, in 9 fact, is born of a kind of indifference to people's 10 humanity, which it may be. But some people are much 11 less sensitive to the humanity of other people. Some 12 people have very high levels of empathy. Some people 13 have remarkably low levels. And that's not always 14 because of the conditions they grew up in. Those are 15 also -- there's actually a syndrome called Williams 16 syndrome in which people simply don't have the 17 capability of separating their utilities from other 18 people's. They'll -- they act only on other people's 19 utility, no concern for themselves at all. That's -- I 20 mean, in some ways that's amazing. Right? What a great 21 kind of a person. But it's hardly neurotypical. People 22 who are completely and unalterably selfish, which we 23 often call sociopaths, are also not neuro -- thankfully 24 not neurotypicals. But they -- but that is -- that is 25 what they believe.</p>
<p style="text-align: right;">Page 150</p> <p>1 be fixed now because" -- "you know, fix it." And what a 2 bureaucrat does, of course, is they just follow standard 3 operating procedures. So to some people that's the 4 morality of large-scale organized standard operating 5 procedures bureaucracies, is if you're the king of 6 England or, you know, if you're a homeless person you're 7 treated exactly, in the case of most people's belief, 8 exactly as badly by the Social Security Administration 9 regardless. Right? 10 And the other side of that is, of course, 11 is people in different situations being treated equally, 12 for example, being punished equally, or being served as 13 poorly or slowly, is completely inappropriate because it 14 doesn't at all match the circumstance they find 15 themselves in. It's not equal when you treat everybody 16 equally when they're not in the same situation, when 17 they haven't done the same thing, or when they're not 18 capable of achieving the same thing or so forth. Right? 19 So the question is do you want to -- you know, do -- are 20 you inclined toward viewing treating difference 21 differently as a moral hallmark or on treating everyone 22 equally as a moral hallmark. And then the question is 23 is one of those hallmarks in and of itself inappropriate 24 or -- they are the way -- these are just -- these aren't 25 things that we create out of philosophy. These are</p>	<p style="text-align: right;">Page 152</p> <p>1 Q. But these moral hallmarks -- I didn't mean to 2 cut you off. I apologize. I think the point is is that 3 they're -- it's biologically measurable, correct? 4 A. Right. So there is an -- there is an 5 underpinning to that that has to do with different 6 brains. Right? So, again, people who are -- who tend 7 to be selfish can learn to be less selfish, can -- but 8 it's really about -- it's sort of on second thought. 9 Right? You can learn -- because we have metacognition 10 we can learn that our first impulse is perhaps not very 11 generous or that our first impulse may be too generous. 12 Right? And then we can learn to discipline that on our 13 own. But the impulse is the impulse, and some part of 14 that impulse comes from life experience, but some part 15 of that impulse also differs biologically across 16 individuals. 17 Q. And I think that in that paragraph one of the 18 impulses is a racial impulse, correct? By which I mean 19 racist. 20 A. So, I mean, you certainly could have a racist 21 impulse. 22 Q. That's biologically determined, correct? 23 A. I think there are -- there are features of 24 biology that incline people to be -- again, I think you 25 have to be careful about exactly what you mean by</p>

<p style="text-align: right;">Page 153</p> <p>1 racist. But to be ethnocentric; that is, to be 2 suspicious of people who are not like them on a whole 3 lot of -- in a whole lot of ways, people that aren't 4 like them on the basis of race, on the basis of 5 nationality, the basis of language, on the basis of 6 religion, on the basis of appearance, even on the basis 7 of gender, right, sort of the -- you know, the sort of 8 traditional patriarchal religion is very suspicious of 9 having women anywhere around them, so those -- those 10 impulses can vary across individuals biologically or the 11 kind of things that socially build into those and create 12 things like fascism can come out of those, can be 13 encouraged by those. It doesn't mean that everybody who 14 ends up falling into the thrall of that in a national 15 situation, for example, is therefore sort of -- again, 16 the environment has a big influence. And so the 17 question of sort of how could Germany get this way or 18 how could Japan get this way that was asked around World 19 War II is really inappropriate in the sense that in -- 20 in one sense the Japanese could be that way because they 21 were Asian, and for the Germans it's, well, I guess 22 because they were Germany, I mean, because they weren't 23 France. I don't know what. But, again, that was -- you 24 know, that's -- that's inappropriate. 25 But it is the case that some individuals,</p>	<p style="text-align: right;">Page 155</p> <p>1 blindness is not unnatural. I mean, I think he is -- 2 you know, some people are on -- you see this on the 3 autism spectrum. People on the autism spectrum are also 4 incredibly literal so you have to be really careful 5 because they -- a sign says something, they follow it, 6 and everybody else says, "no, no, no, that's not" -- 7 it's like "no." Right? So that literalism, you see 8 some of that in constitutional interpretation, right, 9 that inability -- you know, when Scalia says, "Why 10 wouldn't it mean exactly what it says," and my question 11 is, "Why do you think it means" -- "what makes you think 12 that when people put something on a piece of paper it's 13 literally exactly what they meant?" Right? Literalism 14 is a -- is, again, a -- you can -- you can sort of -- 15 you can see where a brain that's to this side on the 16 autism spectrum would be a natural host for a belief 17 that all other things being equal probably people meant 18 exactly what they wrote down. Whereas on this other 19 side you'd say, "Well, people write all kinds of stuff." 20 Right? "It probably doesn't tell us anything." So you 21 can be -- you can believe that everyone should be 22 treated equally. You can believe it's inappropriate to, 23 as the current -- I think the current majority of the 24 Supreme Court believes -- that -- that because race is a 25 suspect category that anything that incorporates race</p>
<p style="text-align: right;">Page 154</p> <p>1 you know, take to -- take to those kinds of things very 2 quickly, very easily, right, without much effort can 3 fall into almost habitually think in ways that are 4 clearly racist. And for other individuals it's less so. 5 And the point here is not that. The point is that 6 people that have a strong belief in the importance of 7 equality -- I was involved in a case where the expert, 8 the expert for the other side said Clarence Thomas was 9 clearly a racist. I have trouble with that. He -- I 10 mean, I happen to think he's a remarkably poor jurist, 11 but that's really a separate issue. Right? I differ 12 with him on all kinds of notions of not only judicial 13 philosophy, but, I mean, you know, his habitual 14 inactivity for a long time on the court, and he's now 15 rediscovered his voice and -- my God. I hope to God 16 he's back out of the hospital and fine because this will 17 be just the kind of thing, have me like -- 18 Q. I won't do that to you. I promise you. 19 A. -- ragging on Clarence Thomas and then he's 20 dead. Like we find out, we come out here, he died 21 recently. 22 Q. I promise I won't do that to you. 23 A. Yeah. So, you know, I'll say this. Again, 24 I -- I assume that Clarence Thomas is remarkable -- I 25 mean, judicial conservatism almost to the point of</p>	<p style="text-align: right;">Page 156</p> <p>1 into decision-making, whether it's drawing district 2 lines or anything else, is suspect. Why is it suspect? 3 It's suspect because all other things being equal you 4 ought not to be using race in making decisions. 5 Now, the court recognizes that while that 6 sets a high -- a high threshold for what a state can do, 7 for example, they recognize that there are conditions 8 under which you do something about that. Right? So 9 that's -- we wouldn't have Section 2 without it. We 10 wouldn't draw districts without that. On the other 11 hand, they also recognize that absent meeting that high 12 threshold that it is a suspect category, that in just 13 sort of regular legislation if you put race in there 14 that's inappropriate, and it ought not be in there 15 because everybody ought to be treated the same 16 regardless of race. So that -- the point of this 17 paragraph is just that you should not assume that people 18 who believe that everyone should be treated equally 19 believe that because they're fundamentally racist. 20 Among other things, it dilutes the importance of 21 understanding that people are fundamentally racist. 22 Right? 23 I think that's really one of my problems 24 with calling every difference in voting behavior, 25 however slight, and even if it occurs without regard to</p>

<p style="text-align: right;">Page 157</p> <p>1 the race of candidates, racially polarized voting, is 2 exactly Brennan's concern, which is if that -- if you're 3 going to label that, people are going to say "wait a 4 minute. So you're saying the voters of Spring Branch 5 are racist?" And the answer is "yes, some of the voters 6 in Spring Branch are racist." Right? We're in Houston, 7 Texas. There are racists here. But that's not -- it's 8 not to say that the entire electorate is or even that 9 the behavior of the electorate in those elections is the 10 result of racism as opposed to something else, right, 11 some policy concern or whatever. So I think if you 12 don't preserve the possibility that individuals can 13 believe in treating everyone the same without that being 14 a code for racism then you diminish the real importance 15 of what it means for someone to actually be racist 16 because racists don't want everybody to be treated the 17 same regardless of race.</p> <p>18 Q. Fair.</p> <p>19 A. They very much want people of a certain race to 20 be treated differently. Right? So that's, I think, is 21 a -- it's not only important to distinguish that in -- 22 just in a general sense of thinking. Although, you 23 know, nothing that we posit here is proven in any 24 scientific sense. We never really quite get there in 25 science. But I think there's good scientific reason to</p>	<p style="text-align: right;">Page 159</p> <p>1 A. I don't believe in biological determinism, so 2 I'm not going to say that. I really don't. I don't 3 believe in environmental determinism, and I don't 4 believe in biological determinism. It's just not a 5 way -- as is true with voting. There are a host of 6 factors that affect people's votes. Those factors may 7 be very small factors for some people. They may be 8 subconscious factors for some people. They may be 9 factors that they override in metacognition. They may 10 be factors that they don't override. They may be 11 factors that are in fact their view of the world and 12 their -- and the way they see things. Right? So they 13 may be frank and open racist attitudes.</p> <p>14 And I think you -- to understand -- to 15 characterize the impact of that on a particular election 16 system you have to have a sense of the degree to which 17 that's actually playing out in the election system. And 18 I don't think the -- sort of the current court system 19 for doing that is perfect, but I think it's been pretty 20 serviceable and done a pretty decent job. And I don't 21 think it tries to -- my view of this -- and I know it's 22 not universally agreed to -- but my view of this is that 23 what's important is if the -- if the -- if the nature of 24 the way that force is operating in the election system 25 creates certain things that can happen and certain</p>
<p style="text-align: right;">Page 158</p> <p>1 believe that those are different states of thinking, 2 that they are -- I would -- I would be willing to wager 3 that in, given six months, 60 subjects in an fMRI 4 machine, I could -- I could show you a brain signature 5 that distinguishes everyone should be treated equally 6 from racism.</p> <p>7 Q. Which presupposes that you could use the fMRI 8 machine to determine if someone is a racist, correct?</p> <p>9 A. It means -- not certainly. But at some -- at 10 some predictive value above random that you could 11 separate -- you could have a -- you could take a set of 12 people in which everybody said "this is what I think the 13 law should be, no regard to race," and you could find 14 the signal that separates -- I mean, I don't even -- 15 honestly I wouldn't take your money this is so easy. 16 But yes. The brain's signature for actual racism is 17 really not hard.</p> <p>18 Q. How common is it?</p> <p>19 A. That we don't know. We don't know how common 20 that is.</p> <p>21 Q. Does it affect voting behavior?</p> <p>22 A. I would -- it's hard to imagine that racism 23 wouldn't affect voting behavior.</p> <p>24 Q. So some part of voting is affected by racial 25 politics and racial biological determinism, correct?</p>	<p style="text-align: right;">Page 160</p> <p>1 things that can't, and those things disproportionately 2 affect both the choice of minority voters and the 3 opportunity of minority candidates, then that's the 4 level at which you need to think about getting another 5 election system, for example.</p> <p>6 Q. And do you have an opinion about whether that 7 has been met here today or for SBISD? Have you ever 8 advised them on that?</p> <p>9 A. Well, I don't think I'm supposed to tell you 10 what I told the lawyers in terms of my advice.</p> <p>11 Q. It depends on when. Right?</p> <p>12 A. What?</p> <p>13 Q. It depends on when. Let's say before 2017 did 14 you ever advise them that they had to consider adopting 15 single-member districts?</p> <p>16 A. My recollection is that as early as the 17 dismissal of the case in what I think was maybe the '90s 18 on Gingles I my advice to the district was that as 19 change took place over time they should think seriously 20 about changing -- in whatever form they wanted to they 21 should change their election system. And I was 22 certainly, you know, happy to talk to them later about 23 alternatives in terms of things like cumulative voting. 24 So that's -- you know, my view has been that that's -- 25 that was prudent for the district to do. It's not that</p>

40 (Pages 157 to 160)

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1 I knew for certain. No one ever knows what's going to
 2 happen in a lawsuit. But I think, you know, you can
 3 give advice as I do quite commonly to -- to districts
 4 about what's prudent. And I think that was my advice
 5 then. That's -- you know, I don't -- I personally don't
 6 think lawsuits are something that's good for school
 7 boards. So I know they have their own -- again, they
 8 have their own preferences. I'm not an opponent in any
 9 sense of at-large elections. I think there's a very
 10 good reason why at-large elections are not on their face
 11 illegal. I think there's a very good reason why groups
 12 like the Urban League still -- you know, it's still a
 13 very common form of election for small cities and
 14 municipalities, and it has -- it has benefits to it.

15 On the other hand, I don't worship at the
 16 altar of -- I was at a school board meeting once and a
 17 fella in full uniform, about 80 years old, stood up and
 18 said, "I didn't fight in World War II and Korea for
 19 single-member districts." And so I didn't say anything
 20 because it's really rude to say things like that to old
 21 people. Besides, he had a -- just enough of a
 22 resemblance to my dad that I was afraid he might smack
 23 me if I said anything. But my answer to him would have
 24 been, "Yes, you did." Right? "The entire United States
 25 Government, every election to every office in the United

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1 States Government is based on some form of single-member
 2 district whether it's the House or the Senate, the House
 3 which declared the war you fought in first and didn't
 4 the second. And we're so obsessed with it that even the
 5 president even though it's impossible to elect a single
 6 individual in a series of single-member districts we
 7 insist on doing it anyway and electing the president in
 8 each of our 50 states. That's how" -- "that's how
 9 obsessed we are as a country. The country you fought
 10 for is a country obsessed with single-member geography
 11 in a way the Europeans find just absolutely implausible
 12 and unaccountable."

13 So there's -- there's nothing magic about
 14 at-large elections, but -- and, again, I -- you know, I
 15 would much prefer the U.S. adopt a parliamentary system.
 16 I think we're at the breaking point for geographic
 17 representation. We're not going to solve the partisan
 18 gerrymandering problem short of just getting rid of the
 19 obvious problem, which is geography. Right? We
 20 don't -- we are not a geography to be represented
 21 anymore. That just doesn't make any sense. We once
 22 were, but we are now people to be represented. That's
 23 what proportional representation is for. It solves
 24 pretty much all the problems you can think of but --

25 **Q. We need a Constitutional Conventional to do**

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1 **that, right, so --**

2 A. Yeah. And God knows -- I'll tell you what. I
 3 used to always scoff, you know, when people say "oh,
 4 you" -- "you don't want a Constitutional Convention
 5 because God knows what they would do."

6 **Q. God knows.**

7 A. But that's before -- that was before like the
 8 last 10 years. And now I'm coming around to the view of
 9 I don't think I want a Constitutional Convention because
 10 God knows what they would do.

11 MR. GOLANDO: I'm going to take a small
 12 break here, sir.

13 THE WITNESS: All right.

14 MR. GOLANDO: I really enjoyed the
 15 conversation. I appreciate your time, but let me just
 16 make sure that I have done my job correctly.

17 MR. CRAWFORD: Sure.

18 (Recess from 1:59 p.m. to 2:07 p.m.)

19 **Q. (BY MR. GOLANDO) Okay. We have just a few**
 20 **questions. I want to authenticate some documents and**
 21 **add some documents into the record. And then I have**
 22 **some questions based on this, if you don't mind.**

23 A. All right.

24 **Q. So my first thing is I want to -- I'm going to**
 25 **hand you Exhibit 6, Expert Exhibit No. 6. I believe**

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1 **this is a copy of your consulting agreement with SBISD.**
 2 **Would you authenticate that for me, please?**

3 A. Yes, that's correct.

4 **Q. And that's your signature on the back page?**

5 A. It is.

6 **Q. And that's a true and correct copy of that,**
 7 **correct?**

8 A. Yes.

9 **Q. And do you have your contract that you had**
 10 **before twenty -- before the litigation began, the one**
 11 **where you -- that governs the OLS and the EI that you**
 12 **provided to Ms. McBride?**

13 A. I -- I might or I might not. I'm not sure
 14 because I was doing a whole bunch of things with the
 15 same law firm, so I don't know if we were just, you
 16 know, working on different things or if there's a
 17 separate, something that -- either an umbrella or an
 18 actual contract, but I'm happy to look and see.

19 **Q. If you wouldn't mind taking a look.**

20 A. Yeah.

21 **Q. I'd like to see it. And if you want to make**
 22 **the record more fulsome you have time to edit the**
 23 **deposition or to provide any discovery. Discovery does**
 24 **close on March 30th, but --**

25 A. All right.

41 (Pages 161 to 164)

<p style="text-align: right;">Page 165</p> <p>1 Q. -- whenever you get to it I'd be appreciative. 2 The next one is the article you provided 3 that formed the basis of part of your report. It's -- 4 I've labeled it Expert Exhibit No. 7. The title of it 5 is "Republican Party of Texas Doubles Down on Local 6 Elections." Is this a true and correct copy of that 7 article, sir, that you relied on? 8 A. Yes, it is. 9 Q. And I noted in your report that -- I don't 10 think you made a reference to partisanship at all. And 11 I also asked you if you had measured partisanship. I 12 just wonder what role did this play in your report, sir. 13 A. In the -- it sort of comes in in two places, 14 but primarily with regard to the discussion of the -- 15 the literature on the potential negative effects of 16 switching to at-large elections. There's the discussion 17 about how this can end up becoming -- itself becoming a 18 political issue, and so that -- it's part of that notion 19 that board elections are becoming increasingly 20 politicized, not just partisan but politicized, and that 21 this is sort of one of the things that may -- that may 22 feed into that. So there's -- there's just a 23 different -- or there's a different system for both 24 identifying potential candidates and for advancing 25 political campaigns for school boards and for</p>	<p style="text-align: right;">Page 167</p> <p>1 MR. ABRAMS: No. I think that there was -- 2 MS. SHAKRA: Let me see. 3 MR. ABRAMS: I just remember there being 4 like a one sentence page. 5 THE WITNESS: Yeah. I think this is the -- 6 MS. SHAKRA: The one missing? 7 THE WITNESS: Is there a page that looks 8 like that? 9 MR. CRAWFORD: I don't know that we made 10 a -- that made the copy. 11 MR. GOLANDO: Maybe it's in the back of the 12 contract. 13 MS. SHAKRA: Did it get out of order? 14 THE REPORTER: Do y'all want to go off the 15 record, by the way? 16 MR. CRAWFORD: Sure. 17 (Discussion off the record from 18 2:11 p.m. to 2:12 p.m.) 19 Q. (BY MR. GOLANDO) I've handed you expert 20 Exhibit No. 8. Could you authenticate it? Is that the 21 article you relied on in part for your report? 22 A. Yes. 23 Q. Okay. What was important about this article 24 for your report from your perspective? 25 A. It's not particularly important because it's</p>
<p style="text-align: right;">Page 166</p> <p>1 nonpartisan cities than there was 20 years ago. 2 Q. Reasonable. But your report doesn't cite to 3 this article, correct? 4 A. It's something that I looked at, and so I 5 brought it because I didn't remember if I had cited it 6 directly -- 7 Q. Okay. 8 A. -- or if I was just -- but it is something that 9 I looked at that, and that affected my thinking in 10 writing the report. 11 Q. Thank you, sir. I appreciate it. The last one 12 is Expert Exhibit No. 8. It looks like what's called an 13 SSN memo. I'm not sure of the source of that. It's 14 titled "Do District-Based Elections for School Board 15 Help Minority Candidates Get Elected?" I'm going to 16 hand it to you. Could you authenticate it for me, sir? 17 A. Yes. 18 Q. Is that a true and correct copy of the article? 19 A. Is there a -- is there a page missing? 20 Q. That's what we have I think. 21 MR. ABRAMS: I think there was a third page 22 with a -- just one line on it. 23 MR. CRAWFORD: I believe those were your 24 originals. So let's see if we -- 25 MS. SHAKRA: This page or --</p>	<p style="text-align: right;">Page 168</p> <p>1 not really research, per se. But I thought it was 2 useful because it's a -- you know, this is part of a 3 kind of a public policy synopsis kind of thing that sort 4 of -- it's supposed to be helpful to policymakers. And 5 the researcher points out two things. One is he points 6 out this idea that, you know, that may not always be -- 7 there might not always be a positive effect for Latino 8 representation in the switch from at-large to 9 single-member. And he also points out that his research 10 shows that school board elections are partisan even if 11 they're not explicitly partisan in the form of the 12 ballot. And so I thought that not only does it sort of 13 show those two things, but it -- it shows that it's 14 being discussed by people not just in a research sense 15 but in a kind of -- sort of the form of kind of public 16 policy recommendation. 17 Q. And what is the source of this article? 18 A. I found it on the Internet, and it's a -- as 19 best I remember, it's a site that has a whole series of 20 things where people reflect on -- sort of produce brief 21 summaries of kind of research findings that may be of 22 use related to -- related to public policy. 23 Q. And -- 24 A. I think it's San -- San Diego I think is where 25 this -- where the person is.</p>

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1 **Q. And there's no data associated with this? He's**
2 **just summarizing previous reports, correct?**
3 A. Correct.
4 **Q. And you're not sure of the source of that data**
5 **or whether it has implications for SBISD, correct?**
6 A. Correct.
7 **Q. Okay. And finally, sir, if you could read this**
8 **paragraph. The first paragraph right after the subject**
9 **heading.**
10 A. Yep.
11 **Q. What does that say, sir?**
12 A. He's saying that the effect is mixed but one
13 directional. That is, it can either help to close the
14 gap, or it can have no effect.
15 **Q. So at worst it has zero effect, and at best it**
16 **could actually increase representation, correct?**
17 A. That's -- that's his summary.
18 **Q. And the election change he's talking about they**
19 **are single-member districts, correct?**
20 A. I assume that's what he's talking about.
21 MR. GOLANDO: All right. Pass the witness.
22 MR. CRAWFORD: We'll reserve our questions.
23 (Whereupon at 2:16 p.m. the
24 deposition was concluded.)
25

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1 I, JOHN R. ALFORD, PH.D., have read the
2 foregoing deposition and hereby affix my signature that
3 same is true and correct, except as noted above.
4
5 _____
6 JOHN R. ALFORD, PH.D.
7
8 THE STATE OF _____
9 COUNTY OF _____
10
11 Before me, _____, on
12 this day personally appeared JOHN R. ALFORD, PH.D.,
13 known to me (or proved to me under oath or through
14 _____) (description of identity
15 card or other document) to be the person whose name is
16 subscribed to the foregoing instrument and acknowledged
17 to me that they executed the same for the purposes and
18 consideration therein expressed.
19 Given under my hand and seal of office this
20 _____ day of _____, _____.
21
22 _____
23 NOTARY PUBLIC IN AND FOR
24 THE STATE OF _____
25 COMMISSION EXPIRES: _____

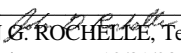

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1 CHANGES AND SIGNATURE
2 WITNESS NAME: JOHN R. ALFORD, PH.D.
3 DATE OF DEPOSITION: MARCH 24, 2022
4 PAGE LINE CHANGE REASON
5 _____
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1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE SOUTHERN DISTRICT OF TEXAS
3 HOUSTON DIVISION
4 VIRGINIA ELIZONDO, §
5 Plaintiff, §
6 v. § Civil Action No.
7 § 4:21-CV-01997
8 §
9 SPRING BRANCH INDEPENDENT §
10 SCHOOL DISTRICT, ET AL., §
11 Defendants. §
12
13 REPORTER'S CERTIFICATION
14 DEPOSITION OF JOHN R. ALFORD, PH.D.
15 MARCH 24, 2022
16
17 I, John G. Rochelle, Certified Shorthand Reporter
18 in and for the State of Texas, hereby certify to the
19 following:
20 That the witness, JOHN R. ALFORD, PH.D., was duly
21 sworn by the officer and that the transcript of the oral
22 deposition is a true record of the testimony given by
23 the witness;
24 That the deposition transcript was submitted on
25 _____ to the witness or to the attorney for
the witness for examination, signature and return to
Worldwide Court Reporters, Inc., by _____;
That the amount of time used by each party at the
deposition is as follows:

43 (Pages 169 to 172)

<p style="text-align: right;">Page 173</p> <p>1 Mr. Barry Abrams - 00:00</p> <p>2 Mr. Martin Golando - 03:39</p> <p>3 Mr. Charles J. Crawford - 00:00</p> <p>4 That pursuant to information given to the</p> <p>5 deposition officer at the time said testimony was taken,</p> <p>6 the following includes counsel for all parties of</p> <p>7 record:</p> <p>8 Mr. Barry Abrams, Mr. Martin Golando, Attorneys for</p> <p>9 Plaintiff;</p> <p>10 Mr. Charles Crawford, Mr. Lucas Henry, Attorneys</p> <p>11 for Defendants.</p> <p>12 That \$ _____ is the deposition officer's</p> <p>13 charges to the Plaintiff for preparing the original</p> <p>14 deposition transcript and any copies of exhibits;</p> <p>15 I certify that a review of the transcript was</p> <p>16 requested.</p> <p>17 I further certify that I am neither counsel for,</p> <p>18 related to, nor employed by any of the parties or</p> <p>19 attorneys in the action in which this proceeding was</p> <p>20 taken, and further that I am not financially or</p> <p>21 otherwise interested in the outcome of the action.</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	
<p style="text-align: right;">Page 174</p> <p>1 Certified to by me this 5th day of April, 2022.</p> <p>2</p> <p>3</p> <p>4</p> <p>5  JOHN G. ROCHELLE, Texas C. 174</p> <p>6 Expiration Date: 10/31/23</p> <p>7 Worldwide Court Reporters, Inc.</p> <p>8 Firm Registration No. 223</p> <p>9 3000 Wesleyan, Suite 235</p> <p>10 Houston, Texas 77027</p> <p>11 (713) 572-2000</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	

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